

THE
PRESENT PRACTICE
OF A
Justice of the Peace;
AND A
Complete Library of Parish Law.

C O N T A I N I N G

The Substance of all the STATUTES and ADJUDGED CASES,
down to the Year 1790, which point out the DUTY and
PRESENT PRACTICE of

JUSTICES of the PEACE,
SHERIFFS,
UNDER-SHERIFFS,
CLERGYMEN,
CHURCH-WARDENS,

OVERSEERS,
HIGH CONSTABLES,
SURVEYORS of the HIGHWAY,
CONSTABLES,
HEADBOROUGHs,

And other COUNTY, WARD, and PARISH-OFFICERS.

By the Rev. EDWARD BARRY, LL. D.

V O L. III.

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Rec. Nov. 8, 1880

T H E

P R E S E N T P R A C T I C E

O F

A Justice of the Peace.

King's Bench.

THE King's Bench, *Bancus Regis*, is the court or judgment-seat where the king of *England* was sometimes wont to sit in his own person; and therefore it was moveable with the courts or king's household, and called *Curia Domini Regis & Aula Regia*; and therein, and in the court of Exchequer, which were the only courts of the king till the reign of *H. III.* all matters of justice, as well civil as criminal, were investigated. But the court of King's Bench, in ancient times, was more especially exercised in all criminal matters and pleas of the crown; leaving the regulation of private contracts and civil actions to the Common Pleas and other courts. *Glanv. lib. 1, c. 2, 3, 4. Smith de Rep. Ang. lib 2. c. 11. Co. 4.*

Court of King's Bench, what.

This court is termed the *Custos morum* of the realm; and, by the plenitude of its power, wherever it meets with an offence contrary to the first principles of justice, and of dangerous consequence if not restrained, adapts a proper punishment to it. *2 Haw. 6.*

Power of the court of King's Bench.

It has a particular jurisdiction, not only over all capital offences, but also over all other misdemeanors of a public nature, tending either to a breach of the peace, to oppression or faction, or any manner of misgovernment; and it is not material whether such offences, being manifestly against

the public good, directly injure any particular person or not. 4 *Inst.* 71. 2 *Haw.* 6.

It has a discretionary power.

And, for the better restraining such offences, it has a discretionary power of inflicting exemplary punishment, either by fine, imprisonment, or other infamous punishment, as the nature of the crime, considered in all its circumstances, shall require; and it may make use of any prison which shall seem most proper; and it is said, that no other court can remove or bail persons condemned to imprisonment by this court. 2 *Haw.* 7.

And by the 6 *H.* 8. c. 6. it is enacted, That the King's Bench have full authority, by discretion, to remand as well the bodies of all felons removed thither, as their indictments into the counties where the felonies were done; and to command the justices of gaol-delivery, justices of the peace, and all other justices, to proceed thereon after the course of the common law, as the said justices might have done, if the said indictments and prisoners had not been brought into the said King's Bench. But this act extends not to high treason.

The judges of the King's Bench are the sovereign justices of oyer and terminer.

The judges of this court are the sovereign justices of oyer and terminer, gaol-delivery, conservators of the peace, &c. as also the sovereign coroners; and therefore, where the sheriff and coroners may receive appeals by bill *a fortiori*, they may. Also this court may admit persons to bail in all cases, according to their discretion. 4 *Inst.* 73, 74. *Vaugh.* 157.

First division of the courts.

Towards the latter end of the *Norman* period, the *Aula Regis*, which was before one great court where the justiciar presided, was divided into four distinct courts; viz. the court of Chancery, King's Bench, Common Pleas, and Exchequer. *Madox.* c. 19. *Braet. lib.* 3. c. 7, 105.

And at the first division of the courts, the intention appears plainly to have been to confine the jurisdiction of the court of King's Bench to matters merely criminal; and accordingly, it was soon afterwards enacted by *Magna Charta*, c. 11. That Common Pleas shall not follow our court, but be held in a certain place: hence it is that, at this day, this court cannot determine a mere real action. 17 *Ed.* 3, 50. 1 *Rol. Abr.* 536, 537.

But though Common Pleas cannot be immediately holden in the King's Bench, yet where there is a defect in the court where by law they be holden originally, they may be holden in the King's Bench; as if a record come out of the Common Pleas by writ of error, there they may hold plea to the end; so where the plea in a writ of right is removed out of the

King's Bench.

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the county by a *pone* in the King's Bench, on a writ of mesne, replevin, &c. 2 *Inst* 23. 4 *Inst* 72, 113. *Show*. 57.

So any action *vi & armis*, where the king is to have fine, as ejectment, trespass, forcible entry, &c. being of a mixed nature, may be commenced in the King's Bench. 2 *Inst* 23.

Also any officer or minister of the court, entitled to the privilege thereof, may be there sued by bill in debt, covenant, or other principal action; for the act takes not away the privilege of the court. 2 *Inst* 23. 4 *Inst* 71. 2 *Bulst* 123.

And this begat the notion, that if a man were taken up as a *trespasser* in the King's Bench, and there in custody, they might declare against him in debt, covenant, or account; for this also was a case of privilege, since the Common Pleas could not procure the prisoners of the King's Bench to appear in their court; and therefore it was an exception out of the statute of *Magna Charta*. 4 *Inst* 71. *Cro. Car.* 330.

The court of King's Bench, as it is the highest court of common law, has not only power to reverse erroneous judgments for such errors as appear the defect of the understanding; but also to punish all inferior magistrates, and all officers of justice, for wilful and corrupt abuses of their authority, against the obvious principles of natural justice; the instances of which are so numerous, and so various in their kinds, that it seems unnecessary to attempt to insert them. 2 *Haw.* 8. 1 *Salk.* 201.

The highest court at common law, having power to reverse erroneous judgments, &c.

Other particulars respecting the jurisdiction and power of this court are distributed under the respective heads of this work, as they regularly occur; we shall therefore conclude this title with a NEW RULE of the court of King's Bench, which much astonished the objects it concerned. At a time when they were elated with the hopes of a general act of insolvency, by which they expected all to be liberated, their rules or limits were newly circumscribed, and considerably reduced.

King's Ben. b New Rules.

E. 30 G. 3. It is ordered by the court, that, from and after the first day of Trinity term next, the rule made in the sixth year of the reign of king George the First, and all other rules for establishing the rules of the King's Bench prison, shall be and the same are hereby repealed. And it is further or-

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dered,

Land-Tax.

dered, that from and after the said first day of Trinity term next, the rules of the King's Bench prison, shall be comprized within the bounds following, exclusive of the public houses hereinafter mentioned: that is to say, from *Great Cumber-Court*, in the parish of *St. George the Martyr*, in the county of *Surry*, along the north side of *Dirty-Lane*, and *Melancholy Walk*, to *Black Friars Road*, along the western side of the said road to the *Obelisk*, and from thence along the south-west side of the *London road*, round the direction-post in the centre of the roads, near the public house known by the sign of the Elephant and Castle, and from thence along the eastern side of *Newington Causeway*, to *Great Cumber-Court* aforesaid. And it is also ordered, that the New Gaol, *Southwark*, and the highway, exclusive of the houses on each side of it, leading from the King's Bench prison to the said New Gaol, shall be within and part of the said rules. And it is lastly ordered, that all taverns, victualling houses, alehouses, all wine vaults, and houses or places licensed to sell gin or other spirituous liquors, shall be excluded out of and deemed no part of the said rules.

It is ordered, that, from and after the first day of Trinity Term next, no prisoner in the King's Bench prison, or within the rules thereof, shall have, or be entitled to have, day rules above three days in each term. And it is further ordered, that every such prisoner having a day rule, shall return within the walls or rules of the said prison, at or before nine o'clock in the evening of the day for which such rule shall be granted.

Landlord and Tenant. See DISTRESS.

Land-Tax.

Ancient method
of taxation.

THE ancient method of taxation was by escuage, which was on lands by knight-service, and by tallage on the cities and boroughs; and it was thus made: When the king wanted money for his wars, those tenants who did not attend him in person, paid him an aid, and the aid was assessed before the justices itinerant. It was generally the gift of all the inhabitants, as a body corporate: if they did not give according to the wants of the crown, the justiciar enquired into their behaviour; and if there were any forfeitures of their charters, *quo warrantos* came out to seize their liberties

ties into the king's hands. But *Ed. I.* found the way of taxing by *escuage* and *tallage* to be very incomplete; because wars were extended into greater length and expence; and therefore he formed into distinct bodies the tenants *in capite*, who held great baronies, and these were called the *barones majores* (the now peers of parliament;) and the representatives of the *barones minores*, and of several corporations, *viz.* the citizens and burghesses, of whom he made one body, which now composes the house of commons. *Gilb. Exch. 192.*

Edward I. granted the people *Magna Charta*, which they had long contended for, and also the charter of the forests; and for *Magna Charta* they granted the king a fifteenth; therefore instead of particular assessments in cities and boroughs, there was one universal assessment of the fifteenth of all their moveable goods. This fifteenth seems to have been at first made out of the ecclesiastical tenth; for the popes claimed the tenth of all benefices; it was consequently easy to know, by the pope's collections of his tenths, what was the value of every ecclesiastical benefice; for the tenth was reckoned at 2*s.* in the pound, and therefore the fifteenth must be 1*s.* 4*d.* The benefice consisted of the glebe, and the tenth part of the township; therefore by the value of the benefice, deducting the glebe, they knew the true value of the township, and how to set a fifteenth upon it: consequently the fifteenth of townships were certain sums, which were set by the kings taxors and collectors under the act of parliament; and commissions were granted to the taxors and collectors of them under the great seal; and their taxation was recorded in the Exchequer. This fifteenth amounted in the whole to about 29,000*l.* *Gilb. Exch. 193, 194.*

A fifteenth
granted to Ed.
1.

But about the time of *Ed. III.* there were certain established sums set upon every township; and, as the king's wants increased, they gave one, two, or three fifteenths. *Id.*

Augmentation
of taxes.

And as the necessities of government multiplied, and the value of things increased, these fifteenths were found to be insufficient for the public, and another kind of taxation was added, namely, the *subsidy*. We find in the reigns of *Henry VIII.* *Elizabeth*, and *James I.* that they raised both subsidies and fifteenths. The subsidy was an aid to be levied of every subject of his lands or goods, after the rate of 4*s.* in the pound for lands, and 2*s.* 8*d.* for goods. And accordingly, in the ancient subsidy acts, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*. *Id.*

When subsidies
were first levied.

Certain sums levied on each particular county, by the long parliament.

The fifteenths were certain, from the time of *Edward III.* but the subsidy was uncertain, and amounted anciently to about 70,000*l.*; and a subsidy of the clergy at the same time (including the monasteries) was 20,000*l.* In the eighth year of the reign of *Elizabeth*, a subsidy amounted to 120,000*l.* In the fortieth year of the same reign, it did not exceed 78,000*l.* Afterwards it fell to 70,000; and, on account of a loose and uncertain way of assessing it, gradually decreased, till the parliament found it necessary to change the method of taxation; and in the time of the long parliament, a certain sum was levied on each particular county by act of parliament, in which act the appointment of commissioners was made. And in this new manner of taxing, the sum to be levied on each particular county was specified in the act, as well as the names of the commissioners, and where to levy it: and the six associated counties, *viz. London, Middlesex, Kent, Sussex, Surry, and Hertford*, not having been pillaged in the civil wars, and being more hearty to the parliament interest, were taxed higher than any other counties in *England*. *Gilb. Exch. 14. 3 Burn, 37.*

Land-tax how established in the disproportion it is now levied.

After the Revolution, in order to support *William III.* in his wars with *France*, it was necessary to come into a land-tax; and, from 1684, to 1693, the tax was made by a pound rate, like the former subsidies; but, when the people found that there was a probability of the war continuing, the tax was much lessened in 1693, every one being desirous of easing his neighbour: then they came to lay a rate upon every county; and the associating counties, being very zealous for the government in the Revolution, and having taxed themselves higher than their neighbours in 1693, it was argued that those counties were better able to bear the tax, and therefore, in 1693, they laid the disproportioned sums which are now the standard of the land-tax. *Gilb. Exch. 197.*

The land-tax acts, which are annual, with little or no variation, seem naturally and regularly reduced to the following heads:

- I. First Meeting of the Commissioners, to issue Precepts for returning Assessors,
- II. Second Meeting: Manner of assessing.
- III. Third Meeting: signing the Assessment and appointing Collectors.
- IV. Fourth Meeting: Appeal.
- V. Collecting and paying to the Receiver-General.
- VI. Receiver-

VI. Receiver-General paying into the Exchequer.

VII. Transmitting Duplicates.

VIII. Penalty on Officers neglecting their Duty.

IX. Indemnity of Officers performing their Duty.

I. First Meeting of the Commissioners to issue Precepts for returning Assessors.

No person shall act as a commissioner in any county or riding at large (the counties of *Merioneth, Cardigan, Caermarthen, Glamorgan, Montgomery, Pembroke, and Monmouth* excepted) who is not seised of lands, tenements, or hereditaments, being freehold, copyhold, or leasehold, over and above all ground-rents, incumbrances, and other reservations, payable out of or in respect of such leasehold estates, which were taxed or did pay, in the year next before, in the same county or riding, for the value of 100*l.* a year of his own estate. Qualification of commissioners.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns-corporate, or cinque-ports, or the inns of court or chancery. Exceptions.

[And by the 28 G. 3. c. 2. s. 49. No commissioner shall act till he has taken the oaths appointed by 1 G. 1. and 6 G. 3. And also, if required, an oath, specifying in writing the parish, situation, quantity of land, whether freehold or copyhold, of the premises which entitle him to act as a commissioner.] Farther qualification of commissioners.

No practising attorney or solicitor shall act as commissioner, without having 100*l.* a year as above. Nor shall any receiver-general, or collector of any aid granted to his majesty, act as commissioner. Attornies and Solicitors.

If any commissioner, not being qualified, shall presume to act, he shall forfeit 50*l.* to him who shall sue (in six months, by 5 G. 3. c. 21.) Penalty on acting not being qualified.

And if any commissioner shall act, before he has taken the oaths of allegiance, supremacy, and abjuration, which shall be administered to him by two or more commissioners, he shall forfeit 200*l.* to the king. Not to act without taking the oaths.

Where there is not a sufficient number of qualified commissioners, within any city or place for which commissioners are particularly appointed, the commissioners of the county may act therein.

The commissioners shall meet at the most usual and common places of meeting, on or before *April 30.* When and where to meet.

And

Subdividing.

And at the first meeting they may subdivide themselves, and the other commissioners not then present, so as three or more be appointed for each division; but they shall not thereby restrain any commissioners from acting in any other part of the county.

And shall set down in writing, who, and what number of the commissioners shall act in each division, and deliver a copy thereof to the receiver-general.

Appointing clerks.

And clerks shall be appointed by a majority of the acting commissioners present at each respective meeting, within every such division.

But in the case of *K. v. the commissioners of St. Martin in the Fields*, H. 26 G. 3. Lord Mansfield said, if clerks were appointed under the land-tax act each time of meeting, there would be no end to the elections. They receive their allowance under an annual warrant, and their appointment is at least for a year. *Durnf. & East. 147.*

Appointment of receiver-general.

The receiver-general shall be appointed by the king, or in pursuance of his directions, and the lords of the treasury shall allow him a salary not exceeding 2*d.* in the pound.

And the death or removal of a receiver-general shall be notified to two or more commissioners, by the commissioners of the affairs of taxes, before the time of the first quarterly payment.

To give notice of appointing a deputy.

The receiver-general shall give notice under his hand and seal of his appointing a deputy (which appointment shall be also under hand and seal) to two or more commissioners, in ten days after the first meeting, and in ten days after the death or removal of a deputy.

Commissioners to set down the sums on each division.

And the said commissioners, at such their first meeting, shall set down in writing the sums to be charged in each division, in proportion to the sums which were assessed thereon by the land-tax act, in the fourth year of *W. & M.*

There is said to have been a hearing on Feb. 10, 1746, before the barons of the Exchequer, on the question, whether the commissioners of the land-tax, at their general meeting for the city and liberty of *Westminster*, have power to alter the *quota's* in their several parishes, and that the barons declared they could not depart from the 4 *W. & M.* and the parliament only could redress the aggrieved parishes.

But where the proportion upon any division shall exceed 4*s.* in the pound, on account of the estates of papists and nonjurors having been charged double within such division, in the 4 *W. & M.* (the sum raised in that year on every division governing the proportions at present), and the said estates are not now liable to pay double, by reason of their being in

Land-Tax.

II

In the hands of persons who have taken the oaths ; then two or more commissioners may certify the same to the barons of the Exchequer, who may order so much of the proportion upon such division, to be abated, as exceeds the full sum of 4s. in the pound upon the estates therein.

Also at such first meeting, two or more commissioners shall direct their several or joint precepts to such inhabitants, high constables, petty constables, bailiffs, and other officers and ministers, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners, at such time and place, not exceeding eight days after the date of such precept, as they shall appoint.

Issuing precepts to return assessors.

And they shall appoint assessors and collectors in privileged and extra-parochial places.

But no person in a city, borough, or town-corporate, shall be compelled to be an assessor or collector out of the limits thereof.

[And by the 20 G. 3. c. 17. At such meeting for appointing assessors, the commissioners shall cause to be delivered to each assessor, a printed form of an assessment, according to which they shall make their assessments ; which shall be in this manner :

Printed form of an assessment to be delivered,

County of S.
to wit.
For the parish
of — in the
said county.

An assessment made in pursuance of
an act of parliament passed in the —
year of his majesty's reign, for granting
an aid to his majesty by a land-tax, to be
raised in Great Britain, for the service of
the year —.

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B. —	Himself. —	— — —
A. B. —	C. D. —	— — —
E. F. —	C. D. —	— — —
C. D. —	G. H. —	— — —
J. K. } and L. M. }	N. O. —	— — —
P. Q. —	R. S. } and T. U. }	— — —

Signed this — day of — 17 —.

By us,

A. B. }
C. D. } Assessors.

And

Land-Tax.

And if any person shall hold or occupy messuages, lands, or tenements, belonging to different owners, the same shall be separately and distinctly rated in such assessments, that the proportion of the land-tax to be paid by each separate owner respectively may be known and ascertained.]

II. Second Meeting. Manner of assessing.

Penalty on assessor not appearing.

Any assessor who shall not appear, without lawful excuse to be made out on the oath of two witnesses; or appearing, shall refuse to serve, shall forfeit to the king a sum not exceeding 5*l.* nor less than 40*s.*

Charge to the assessors.

The commissioners shall openly read, or cause to be read to the assessors, the several rates, duties, and charges, and openly declare the effect of their charge to them, and how they ought to make their assessments, and in what manner they are to proceed in the execution of the act. Which shall be in the manner following, viz:

Assessment on personal estates.

Towards raising the sums required (supposing the tax to be laid at 4*s.* in the pound for that year), the charge upon *personal estates* shall be thus: viz. All persons having an estate in goods, wares, merchandizes, or other chattels, or personal estate whatsoever, within *Great-Britain* or without, belonging to, or in trust for them, shall pay 4*s.* in the pound, according to the true yearly value thereof: that is to say, for every 100*l.* of such ready money and debts, and for every 100*l.* worth of goods, 20*s.*; and in that proportion for every greater or lesser quantity; after deducting therefrom such sums as they *bona fide* owe, and such debts as the commissioners shall judge desperate; and except stock upon lands and household-stuff, and debts and loans owing from his majesty.

Where to be assessed.

Every person, whether he has a certain place of residence or not, shall be rated for his *personal estate* at the place where he is resident at the time of the execution of the act. And if he was out of the realm at the time of the assessment, he shall be rated at the place where he was last abiding in the realm.

In the case of *Purret and Weeks, H. 7 G.* An excise-man who lived in the county of *Devon*, and executed his office in several parishes in that county, as well as in another that extended into *Somersetshire*; the commissioners of the last-mentioned county thinking they had a concurrent power with the commissioners of *Devon*, to tax him for his salary, as he executed his office in their county, taxed him accordingly,

accordingly, and, for want of payment, distrained : for which trespass was brought ; and ruled, that it well lay ; for though his duty required him to ride about in that county, he must be said to keep his office in the town where he lives and has his books, and there he was only taxable.

And every householder shall, when demanded by the assessors, give an account of the names and qualities of those persons who shall sojourn and lodge in their houses ; on pain of 5*l.* to be recovered as the other penalties.

Personal estate of lodgers.

But if a person has goods in any other county than where he is resident, or had his last residence ; he may be assessed for such goods in the county where they are.

A person having goods in any other county.

And if a person, in a city or town-corporate, shall have his house in one parish or ward, and goods in another, he shall be assessed for the whole where he inhabits.

House in one parish, and goods in another.

If a person, having two places of residence or otherwise, shall be doubly charged for any personal estate, office, or otherwise ; then, on certificate of two commissioners for the place of his last personal residence, under hand and seal, of the sum charged upon him there, and on oath made of such certificate, before a justice of the place where the certificate shall be made, the person so doubly charged shall be discharged elsewhere.

Persons doubly charged.

But if any person who ought to be taxed for his personal estate, shall, by changing his place of residence, or by any other fraud or covin, escape from the taxation, and the same shall be proved before two commissioners, or one justice, where such person resides, within one year after such tax made, he shall pay treble, to be levied on his lands and goods, on certificate thereof made into the Exchequer by such justice or commissioners.

Penalty on fraudulently escaping taxation.

And every person having an annuity or pension out of the Exchequer, or out of any branch of the revenue, or to be paid by any person whatsoever, shall pay 4*s.* for every 20*s.* except salaries charged upon lands which pay to the full, and except annuities especially exempted by act of parliament : and except annuities paid to superannuated commission or warrant-officers, or to the widows of sea-officers, slain in the service of the crown : and except money lent, or advanced to the government, on the security of the act : and except turnpike-tolls, and the salaries of turnpike-officers.

Annuities or pensions.

Also every person having any public office or employment, and their substitutes, shall pay 4*s.* for every 20*s.* of their salaries : except military officers in the army or navy.

Public offices.

And

Salaries and
pensions where
paid.

And officers shall pay for the profits of their offices or employments, where the office is executed, and not where the salary is payable; but all other pensions, stipends, and annuities (not charged upon lands) shall be assessed where they are payable.

Tax on places
in the Ex-
chequer, &c.
may be stopped.

And officers in the receipt of the Exchequer, and other public offices, shall, on request of the assessors, deliver *gratis* true lists or accounts of all pensions, annuities, stipends, or other annual payments, and all fees, salaries, and other allowances; and, if the tax thereon shall not be afterwards paid, it shall be stopped in such offices, and an account thereof shall be given to the collectors.

Deputies in office shall pay for their principals.

[By the 32 G. 2. c. 33. relating to the duty on offices, it is provided, That in all future assessments to the land-tax, such officers shall not be assessed at a higher rate than they were in 1758.]

Real estates.

And *real estates* shall be charged thus: That the entire sum may be raised, all manors, messuages, lands, and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron-mills, furnaces, and other iron works, salt-springs, and salt-works; all allum-mines and works; all parks, chafes, warrens, woods, under-woods, coppices; all fishing tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever, shall be charged with as much equality and indifference as possible, by a *pound rate*, to make up the several sums charged by the act on each county or place.

Rent-charge.

And where manors, messuages, lands, tenements, tithes, and hereditaments are incumbered with rent-charges, annuities, fee-farm rents, rent-service, or other rents thereupon reserved or charged, the owners thereof may detain, out of the payment of the same, a proportionable share of the land-tax, provided that such rent or annual payment amount to 20s. a year or more.

Fee-farm rents
of the crown.

And all receivers of fee-farm rents, or other rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 C. 2. c. 6. and 22 & 23 C. 2. c. 24. or one of them, and which before *March* 25, 1693, were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 4s. for every pound of the said rents, and so proportionably for any greater sum than 10s. to the party paying the same; on pain of 20l. to the party grieved, with full costs. Provided that

that such deduction or allowance do not exceed the sum assessed on the whole estate, out of which such purchased free-farm rent issues.

And every person shall be assessed for lands where they lie, and not elsewhere.

And such tax shall be paid by the tenant, who shall deduct it out of his rent; and if any difference shall arise between the landlord and tenant, the commissioners, or two of them, shall settle the same. Tax to be paid by the tenant.

But contracts between landlord and tenant, or other persons about paying taxes, shall not be thereby avoided.

E. 27 G. 3. K. v. the Inhabitants of Mucham. It was adjudged in this case, that, with respect to the public, the land-tax act is to be considered as a tenant's tax, whatever may be the view of it as between landlord and tenant; consequently where both are named, and neither expressly rated, but the tenant pays, the tenant acquires a settlement. Land-tax adjudged a tenant's tax.
Caldecott's Rep. 276.

And in the case of *K. v. the Inhabitants of Endon, &c. M. 24 G. 3.* A tenant whose name has once been introduced upon the land-tax rate, though it is taken off in the same year, in consequence of his poverty, and at his request, as the tax is a tenant's tax, is to be considered as rated by the parish, if they put no other upon the rate, and he gains a settlement, though the landlord had been previously rated.
Caldecott's Rep. 374.

Also in the case of *K. v. the Inhabitants of St. Lawrence, M. 25 G. 3.* it was determined, that the land-tax is a tenant's tax, with regard to the public; and consequently where both the landlord's and tenant's names appear upon the rate, it is *prima facie* a rating of the tenant. *Caldecott's Rep. 379.*

But, though the land-tax is a tenant's tax between him and the public, yet if the names of both landlord and tenant appear upon the assessment, and the receipt given to the tenant states that the sum paid was assessed upon the landlord, it is a rate upon the landlord, and the tenant does not thereby gain a settlement. As in the case of *K. v. the Inhabitants of St. James, Bury St. Edmunds. M. 25 G. 3.* Except where the receipt given states that the sum paid was assessed upon the landlord.

The taxes on the houses of foreign ministers shall be paid by the landlord. Foreign ministers.

But no person shall be charged with, or liable to, the pound-rate, whose lands, tenements, or hereditaments, are not of the full yearly value of 20*s.* in the whole. Poor exempted.

And nothing herein shall charge any college or hall in Oxford or Cambridge, or the colleges of Windsor, Eton, Winton, Colleges, charities, &c. exempted.

Winton, or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hospital in respect of the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: or any master, fellow, or scholar, or exhibitor of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls, or any masters or ushers of schools, in respect of any stipends, wages, rent, profits, or exhibitions whatsoever, arising to them in respect of the said several places or employments: or any of the lands which, before *March 25, 1693*, belonged to the sites of any college or hall, or to *Christ's hospital*, *St. Bartholomew*, *Bridewell*, *St. Thomas*, and *Bethlehem hospitals* in *London*, and *Southwark*; or any other hospitals or alms-houses, in respect of any rents or revenues, which, before *March 25, 1693*, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only.

But not to excuse the tenants of their lands. &c.

Provided that this shall not discharge any tenants of any houses or lands belonging to the said colleges, halls, or hospitals, alms-houses, or schools, who by their leases or other contracts are obliged to pay all rates, taxes, and impositions.

And generally all such lands, revenues, or rents belonging to any hospital or alms-house, or settled to any charitable or pious use, as were assessed in the 4 *W. & M.* shall be liable; and no other lands, revenues, or rents, then belonging to any hospital or alms-house, or settled to any charitable or pious use, shall be charged, taxed, or assessed.

If any question shall arise, how far any lands or tenements, belonging to any hospital or alms-house, not exempted by name, shall be liable, the same shall be finally determined at the appeal.

[But lands which have been given to charities since the 4 *W. & M.* shall not be exempted; for, as the sums upon the several divisions are now charged as they were in that year; if any lands, not then exempted, should be appropriated to charities, they would become exempted, and lay a greater burden upon all the rest.]

The commissioners shall assess the assessors.

Members of parliament.

Members of parliament shall be assessed for their personal estate at their mansion-houses, or places where they most usually reside during the interval of parliament.

In what places persons shall be assessed.

And all places, constablewicks, divisions, and allotments, shall be assessed in such county, hundred, rape, wapentake, constablewic,

constablewic, division, place or allotment, as they have usually assessed in.

Papists, or reputed papists of eighteen years of age and upwards, who shall not take the oaths of allegiance and supremacy, (1 W. c. 8.) shall pay double; unless they take the said oaths, before two commissioners, in ten days after the first meeting.

Also every person (whether papist or not) being eighteen years of age and upwards, and not having taken the said oaths, and upon summons under hand and seal of two commissioners, refusing to take them, or neglecting to appear, shall also pay double.

But quakers who refuse to take the oaths, shall not pay double, if they shall make and subscribe the declaration of fidelity in the act of 1 W. c. 18.

And at and after the charge given the commissioners shall take care, that warrants be issued forth, and directed to two at least of the most able and sufficient inhabitants, appointing and requiring them to be assessors; and shall also therein appoint a day and place for the said assessors to appear before them, and to bring in their assessments in writing.

[And the said assessors shall make three duplicates of the assessments; (and shall at least fourteen days before delivering the assessments to the commissioners) cause one of them, or a fair copy thereof, to be put upon the door of the church or chapel; or if it be for an extraparochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining. 20 G. 3. c. 17.]

III. Third Meeting: signing Assessments and appointing Collectors.

If the assessor, after he is appointed, shall neglect or refuse to serve, or shall not appear at such third meeting, without lawful excuse, to be proved on oath of two witnesses, or shall not perform his duty, he shall forfeit to the king any sum not exceeding 40*l.* to be levied as the rates, and charged to the receiver-general.

[At such third meeting, the assessors shall deliver three duplicates of the assessment in writing, signed by them, to the commissioners. 20 G. 3. c. 17.]

And they shall then also return the names of two or more able and sufficient persons, living within the places where they shall be chargeable respectively, to the collectors; for whom the parish or place shall be answerable.

Collectors to
give security.

And such collectors shall, if required, give security to three commissioners, equal to the amount of the whole rate on the respective districts, for paying to the receiver-general such money as shall come to their hands; on failure whereof they may appoint two or more persons who shall give such security: if none are able or willing, then the persons first named shall stand.

Signing the du-
plicates.

And three or more commissioners shall then sign and seal the said three duplicates, and deliver one of them to the collectors (whom they shall nominate and appoint) with warrant to the said collector to collect the same.

Appointing the
appeal day.

And they shall then also give notice to the collectors, at what time and place appeals may be heard and determined; which shall be at least thirty days from the time of signing and sealing and delivering the duplicate to the collectors.

IV. Fourth Meeting: Appeal.

Notice of the
appeal day to
be given in the
church, and put
upon the church
door.

Within ten days after the receipt of the duplicates, every collector shall cause public notice to be given in every parish church or chapel within his district, immediately after divine service on the Lord's day, (if divine service shall be performed therein within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: and shall also, on the same day, cause the like notices to be fixed in writing on the door of such church or chapel.

Duplicates to be
inspected.

And the collector shall permit the duplicates to be inspected at all seasonable times of the day, without fee.

Appellant to
give notice in
writing.

Persons intending to appeal shall give notice thereof in writing to one or more assessors that they may attend, if they think fit, to justify the assessment.

In case of over-
charge, how re-
lieved.

If it shall appear by proof upon oath, that lands are overcharged by the pound rate, the commissioners at the appeal may make abatement, and cause the sum abated to be reassessed upon the whole hundred, lathe, wapentake, or other division where the overcharges happen, though the rate of 4s. in the pound be thereby exceeded, or upon any person therein undercharged, so that the whole sum charged on such division be fully answered.

Commissioner
interested to
withdraw.

Should any controversy arise in apportioning the assessments, which concerns any commissioner, such commissioner concerned therein in his own right, or in right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw till it be determined,

terminated, on pain of forfeiting any sum not exceeding 20*l.* to be levied and paid as the other fines.

Appeals which shall be heard and determined on the ap-
Appeal deter-
 mined, final.
 peal day shall be final, without any farther appeal on any
 pretence whatsoever, and without further trouble or suit in
 law, either in the King's Bench or any other court.

[If the name of the owner of any messuage, land, or tene-
Particular ap-
 peal with re-
 spect to parlia-
 mentary votes,
 ment, intituled to vote for a knight of the shire, shall not be
 inserted in the assessment; he may, on giving notice in
 writing to one of the assessors, appeal to the said commis-
 sioners, who shall amend the assessment as they shall see
 cause. And if any person shall think himself aggrieved by
 the determination of the commissioners, he may appeal to
 the justices at the next sessions, giving ten days notice thereof
 to one of the commissioners who signed the duplicate, and to
 one of the assessors of the place where the estate lies: and
 the sessions may award costs to either of the parties; and by
 their order or warrant levy the same by distress. And the
 commissioners shall cause one of the duplicates so amended
 to be returned to the assessors, to be by them delivered to
 the high constable, and by him to the clerk of the peace, to
 be had recourse to in his possession in cases of election of
 knights of the shire. 20 G. 3. c. 17.]

V. Collecting and paying to the Receiver-General.

The collectors shall demand the tax of the parties them-
Collectors to
 make demand.
 selves if they can be found, or else at the place of their last
 abode, or upon the premises charged.

And if any person shall refuse or neglect to pay it to the
Tax may be
 levied by
 distress.
 collector on demand, he may levy it by distress and sale of
 the goods of the person so neglecting or refusing.

And where any refusal, neglect, or resistance shall be made,
Collector may
 break open the
 house.
 he may (calling the constable to his assistance) break open
 in the day-time any house, and by warrant of two commis-
 sioners any chest, trunk, box, or other thing, where any
 such goods are.

Or he may distrain upon the messuages, lands, tenements,
 and premises; and may keep the distress so taken for four
 days, at the charges of the owner; and if not paid in four
 days, the distress shall be appraised by two inhabitants or
 other sufficient persons, and sold by the collector, returning
 the overplus immediately (if any there be) over and above
 the tax, and charge of taking and keeping the distress.

And if any difference shall arise on taking the distress, it
 shall be determined and ended by two commissioners.

Commitment
for want of di-
stress.

If any person shall refuse or neglect to pay, for ten days after demand, or shall convey his goods so that distress cannot be made, he shall be committed (unless he is a peer) by warrant of two commissioners, to the common gaol, until payment of the money assessed, and of the charges for bringing in the same.

Distraining by
28 G. 3.

[By the 28 G. 3. c. 2. s. 17. After reciting that doubts had arisen touching the authority of the collectors to distrain for non-payment of the land-tax, under the warrants usually granted by commissioners at the time of their appointment, it is enacted, That if any person shall refuse or neglect to pay any sum whereat he is assessed, upon demand by the collector, according to the precepts delivered by the commissioners, such collector may levy the same by distress and sale of the goods and chattles of such person, or may distrain upon the messuages so charged, without any further authority from the commissioners for that purpose.]

Levying arrears.

Arrears may be levied by the present commissioners, in the same manner as the present tax.

Where lands or houses are unoccupied, and no distress can be found thereon, the collectors for the time being may distrain at any time after; and they shall distribute the money to those who contributed to make it up.

Tax on wood-
lands how to be
levied.

Where woodlands are assessed, and no distress can be had, the collector or constable, by warrant of two commissioners, at seasonable times of the year, may cut and sell wood (except timber trees) to pay the tax.

Tax on tithes,
tolls, and other
annual profits,
how to be
levied.

If the tax upon any tithes, tolls, profit of markets, fairs, or fisheries, or any other annual profits, not distrainable, shall not be paid in six days after demand, the collector, constable, or other officer, by warrant of two commissioners, may seize and sell so much thereof, wheresoever found, as shall be sufficient to pay the tax and charges occasioned by non-payment.

Examination of
collectors.

By the 28 G. 3. c. 2. s. 22. Commissioners may examine the collectors *upon oath*, whether the sums assessed are duly collected.

Collector to pay
to the receiver.

The collector shall quarterly pay the money received, to the receiver-general, or his deputy, on or before *June 24, Sept. 29, Dec. 25, and March 25*, at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay-days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode.

Receiver neg-
lecting to at-
tend.

And if the receiver-general shall wilfully neglect to attend at

at the time and place appointed, he shall forfeit 100/; half to the king, and half to him who shall sue.

The receiver general, or his deputy, shall give a receipt gratis. Receiver to give receipts.

And the collectors shall be entitled to 3d. in the pound for collecting and giving receipts, which they may detain out of the last payment. Collector to have threepence in the pound.

And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver-general, he shall deliver a list of the money received by him, to such person as two or more commissioners shall under their hands appoint, on pain of forfeiting a sum not exceeding 20/ to be paid into the Exchequer, as the fines on assessors and collectors. Receiver to give lists of money received

If the collector shall keep in his hands any part of the money by him collected, longer than the time limited, or shall pay any part of it to any other person than to the receiver-general, or his deputy, he shall forfeit 40/. Collector making default.

[By the 28 G. 3. c. 2. s. 85. Collectors keeping money in their hands shall forfeit not exceeding 40/. nor less than 5/ to be levied by distress.]

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money by him received, and not pay the same as the act directs, two commissioners may imprison him, or seize his estate, as well freehold as copyhold, and all other estates both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meeting of the commissioners, and shall give public notice thereof at least six days before; and the commissioners at such general meeting may sell such estates, or any part thereof, for payment. Collector neglecting to pay money by him received.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land-tax money to their own use, and cause them to pay the same, to make up the deficiency, if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money amounts to: and if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment. Commissioners may imprison collectors neglecting to pay, and sell their estates.

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the distress, as two commissioners, who ordered the distress, shall judge reasonable.

And on failure in payment, the receiver-general shall certify default. Receiver to certify default.

tify the same into the Exchequer; and the place or persons neglecting shall be liable to process.

Deficiency to be reassessed on the division.

If the full proportion upon any division shall not be fully assessed, levied and paid; or if any share thereof shall be assessed on any person unable to pay, or on any empty or void house or land, where it cannot be collected or levied; or, if through wilfulness, neglect, mistake, or accident, the assessment shall not be paid to the receiver-general or his deputy, the same shall be reassessed upon such division.

Receiver falsely returning arrears.

If the receiver-general shall return any persons in arrear who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king.

And no receiver shall return any place in arrear, after three years: but the same shall be a debt on him and his securities.

[And by the 28 G. 3. c. 2. s. 116. No receiver-general shall return an *insuper* upon any county or place, after two years, for monies in arrear; but the same shall be a debt on him and his sureties.]

VI. Receiver-General paying into the Exchequer.

Paying into the exchequer.

The receiver-general, within twenty days after the receipt, shall pay the money into the Exchequer.

And if he shall pay otherwise than into the Exchequer, or not within the time limited, he shall forfeit 500*l.* to him who shall sue.

No receiver-general, or any of his agents, shall maintain an action against the hundred, on account of being robbed in carrying the money, unless they are together in company, and in number three at the least.

VII. Transmitting Duplicates.

Duplicates to be transmitted to the receiver-general, and into the king's remembrancer's office in the exchequer.

The commissioners, on or before August 8, or in twenty days after (all appeals being first determined), shall cause to be delivered to the receiver-general or his deputy a schedule or duplicate in parchment under their hands and seals, containing the whole sum assessed upon each parish or place, and the christian names and turnames of the respective assessors and collectors, and shall transmit a like schedule or duplicate into the king's remembrancer's office in the Exchequer; for which the remembrancer, or his deputy, shall give a receipt gratis, on pain of 10*l.*

And

And in the schedules which are to be transmitted into the king's remembrancer's office, the commissioners shall distinguish and set down the gross sum charged in any division for double taxes, that it may be known how much the double taxes amount to in such division.

Amount of double taxes.

[By the 18 G. 2. c. 18. which requires that no person shall vote in the election of a knight of a shire, for any lands which have not been assessed to the land-tax for twelve calendar months next before it, it is enacted, That the commissioners, or three of them, shall sign and seal a duplicate of the copies of the assessments to be delivered to them by the assessors, after all appeals determined, and cause it to be delivered to the clerk of the peace, to be kept among the records, and inspected by any person without fee.]

Duplicate to be delivered to the clerk of the peace.

The clerks to the commissioners, for their trouble in writing the assessments, duplicates, and copies, and all warrants, orders, and instructions relating thereto, shall have $1\frac{1}{2}d.$ in the pound, to be paid by the receiver-general, according to the warrant of two commissioners.

Commissioners' clerks to have one penny half-penny in the pound.

On the death or removal of the commissioners clerks, into whose custody have been delivered the duplicates of the several books of assessments, minute books, and other books and papers relating to the land-tax; the clerks so removed, or the executors or administrators of such clerk dying, shall, within one calendar month after notice in writing signed by three or more commissioners, or a true copy thereof given or left at the usual place of abode of such person, deliver up all such books and papers to such person as the said commissioners shall by such notice appoint, on pain of 50%. with full costs; half to the receiver-general in aid of the land-tax, and half to him who shall sue.

Death or removal of commissioners' clerks.

VIII. Penalty on Officers neglecting their Duty,

Any assessor, collector, or other person, who shall wilfully neglect or refuse to perform his duty, or shall be guilty of fraud or abuse, three or more commissioners may fine him in any sum not exceeding 40%. which shall not be taken off but by a majority of the commissioners who imposed it: to be levied by warrant of the said commissioners, by distress and sale; and for want of distress (if not a peer) to be committed to prison by two commissioners till payment.

Officers neglecting their duty.

Other penalties are annexed to the several offences.

And all fines shall be paid to the receiver-general, and afterwards paid by him into the Exchequer; and they shall

Larceny.

be inserted in the duplicates to be transmitted into the office of the king's remembrancer.

IX. Indemnity of Officers performing their Duty.

No commissioner, assessor, or collector, shall be liable to any other penalties than those inflicted by the act.

And persons who are sued for any thing done in the execution hereof may plead the general issue, and have treble costs,

See also the titles HOUSE, and OFFICE.

Larceny.

Larceny, what.

LARCENY, *larrecin*, French, *latrocinium*, Latin, is a theft of personal goods or chattels, in the owner's absence; and, in respect of the thing stolen, is either great or grand, or small or petit.

I. Of Grand Larceny.

II. Of Petit Larceny.

III. Larceny from the Person.

IV. Larceny from the House.

V. Larceny in a navigable River.

VI. Other Kinds of Larceny.

VII. Receiving stolen Goods.

VIII. Advertising a Reward for stolen Goods, or receiving a Reward for causing them to be restored.

IX. Detaining Goods offered to be pawned or sold, suspecting them to have been stolen.

I. Of Grand Larceny.

Grand larceny, what.

Grand larceny, says Mr. *Hawkins*, is a felonious and fraudulent taking and carrying away, by any person, of the mere personal goods of another, above the value of 12d. *Haw. 89.*

It must be felonious and fraudulent; for felony is always accom-

accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where a person shall break open a door, in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. 1 Haw. 65.

The mind only makes the taking of another's goods to be felony, or a bare trespass only; but as the variety of circumstances is so great, and the complications thereof so mingled, it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary: it must therefore be left to the due and attentive consideration of the judge and jury, wherein the best rule is, in doubtful matters, rather to incline to acquittal than conviction. But in general it may be observed, that the ordinary discovery of a felonious intent is, if the party does it secretly, or, being charged with the goods, denies it. 1 H. H. 509.

The mind maketh a felony or a trespass.

But doing it openly and avowedly, does not however excuse from felony. So where a man came to *Smithfield* market to buy a horse, and a jockey came thither to buy one; the owner delivered his horse to ride up and down the market, to try his paces; but instead of that, the jockey rode away with the horse: this was adjudged felony. *Kel.* 82.

Felony to ride away with a horse delivered conditionally.

But where the delivery is unconditional, it is otherwise, as in the following case. At *Chelmsford* summer assize, 1787, for the county of *Essex*, *Justin Harvey* was indicted before Mr. justice *Gould* for horse-stealing. The prosecutor had sent his servant with the horse to *Harlowbush* fair, in order to sell it. The prisoner met the prosecutor, to whom he was personally known, in the fair: "I hear," says the prisoner, "you have a horse to sell; I think he will suit my purpose, and if you will let me have him a bargain, I will buy him." The prisoner and the prosecutor walked together into the fair; and, upon a view of the horse, the prosecutor said to the prisoner, "You shall have the horse for eight guineas;" and calling to his servant, he ordered him to deliver the horse to the prisoner: the prisoner immediately mounted the horse, saying to the prosecutor that he would return immediately and pay him. The prosecutor replied, "Very well, very well." The prisoner rode away with the horse and never returned. The court: It is impossible, by any construction whatsoever, to make this a felony. The case in *Kelynge's Reports*, 82, where a man rides away with a horse, which he had obtained on pretence of trying its paces, was a conditional delivery. Major *Simple's* case, which is the most recent of the kind, and included a consideration of the *King v. Pares*, was a delivery for

If a horse be purchased and delivered to the buyer, it is not felony though he immediately ride away with it, without paying the purchase-money.

for a special purpose, or rather a contract of unlimited duration; but in the present case the delivery was unconditional, and the contract was completed. It was a sale, and the possession as well as the property was entirely parted with. The prisoner has defrauded the prosecutor of the price of the horse, but not of the horse itself, and his only remedy is by action to recover the eight guineas: but the prisoner cannot be indicted for a felony. *Leach's Cas. of Cr. Law*, 401.

Where a man enters a house by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and runs away with him; this is felony under colour of law. 2 *Ventr.* 94. *Kel.* 83.

Or where a person came into a sempstress's shop, cheapened goods, and ran away with the goods out of the shop, openly, in her sight; this was adjudged to be felony. *Raym.* 276.

Felony includes trespass.

As all felony includes trespass, every indictment must have the words *feloniously took*, as well as *carried away*: whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

Where possession is given for a particular purpose, it cannot be a felonious taking.

Upon this ground it has been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them as a felon; and *a fortiori* therefore it must follow, that one who has the *actual possession* of my goods, by my delivery, for a special purpose; as a carrier who receives them in order to carry them to a certain place; or a taylor who has them in order to make me a suit of cloaths; or a friend who is intrusted with them to keep them for my use, cannot be said to steal them, by embezzling of them afterwards. 1 *Haw.* 89.

Horse on a common.

But if a man's horse be on a common, where he has a right to put him, and another shall take that horse with an intent to steal him; it is no finding, but a felony. 1 *H. H.* 506.

Horse straying.

Or if the horse shall stray into a neighbour's ground or common, it is felony in him who takes him. But if the owner of the ground takes him doing damage, or the lord seizes him as a stray, though perhaps he has no title so to do, yet it is not a felonious intention, and therefore cannot be felony. 1 *H. H.* 506.

Carrier taking goods out of a pack.

It has been resolved, that if a carrier shall open a pack, and take out part of the goods; or a weaver, who has received silk to work; or a miller who has corn to grind, shall take out

out part thereof, with intent to steal it, it is felony. *1 Haw. 90.*

So if a man's goods are in a place where ordinarily they are or may be lawfully placed, and a person takes them with intent to steal them, it is felony, and the pretence of finding must not excuse. *1 H. H. 506.*

Taking another's goods where lawfully placed.

It seems generally agreed, that a person who has the bare charge, or the special use of goods, but not the possession of them, may be guilty of felony in fraudulently taking away the same: as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps the key of my chamber, or a guest who has a piece of plate set before him in an inn. *1 Haw. 90.*

Taking goods by those who have a bare charge of them.

By the 21 *H. 8. c. 7.* it is enacted, That servants embezzling their master's goods to the value of 40s. or above, (though this taking be no trespass) shall be punished as felons: but this shall not extend to any apprentice, nor to any person within eighteen years of age.

Servants embezzling their master's goods.

And by the 12 *Ann. c. 7.* If taken out of a house or outhouse, it is felony without benefit of clergy.

Also by the 3 *W. c. 9.* Any person who shall take away, with intent to steal or embezzle, any furniture out of his lodging, shall be guilty of felony.

With respect to what shall be considered a sufficient carrying away, to constitute the offence of larceny;

It seems that any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off. *1 Haw. 93.*

What is a sufficient carrying away to constitute larceny.

The following cases will afford perfect information upon this subject. At the Old Bailey in May sessions 1784, James Lampier was indicted before Mr. baron Perryn, for assaulting Albina Hobart, and taking from her person violently, and against her will, one gold ear-ring set with diamonds, value 150l. the property of her husband George Hobart, esquire. The circumstances of this case, as they appeared in evidence, were as follow: Mrs. Hobart was retiring from the Opera-House, through the king's door, towards her carriage, which had drawn up close to the pavement of the street to receive her: Whilst she was preparing to step in, she felt a person, who was proved to be the prisoner, take hold of her ear, and pull her ear-ring, as if endeavouring to pull it off; her ear by this violence was torn entirely through, the ear-ring separating from the ear, and Mrs. Hobart conceived it had been taken away: but, on her arrival at home, it was found among the curls of her hair. There was no proof that the ear-ring was ever seen

Lampier's case

in

in the prisoner's hand; but his hand was seen elevated to her ear, and at that instant Mrs. *Hobart* exclaimed, "I have lost my ear-ring!" Mr. baron *Perryn* to the jury: Robbery is only an aggravated species of larceny; and, to constitute a larceny, it is essential that there shall not only be a *taking*, but a *carrying away*. The *taking*, in the present case, is very clearly proved, for the ear-ring was completely separated from the ear; but it seems questionable whether there has been a sufficient *carrying away*. Several cases were cited, and particularly the following leading case upon this subject: A man lodged at an inn, and in the morning, before it was light, took the sheets from off the bed in which he lay, with an intent to steal them, and carried them into the hall, where he left them, and went to the stable to get his horse, where the hostler seized him; and it was adjudged to be larceny. (27 *Aff. Pl.* 39.) The jury, after hearing these cases, found the prisoner, *James Lampier*, guilty; but the judgment was respited, and the case submitted to the consideration of the twelve judges. In July session following the prisoner was put to the bar, and informed by Mr. *Reynolds*, clerk of the arraigns, that his case had been considered by the judges, and they were of opinion, That he was guilty of the felony charged against him in the indictment. *Leach's Cas. in Cr. Law*, 297.

Coslet's case,

Some of the following cases were also cited upon Mrs. *Hobart's* prosecution:

At the Old Bailey in February session 1782, *Henry Coslet* was indicted for stealing a quantity of currants, the property of *John Parker*. The prosecutor was the proprietor of the *Uxbridge* waggon, in the fore part of which the goods laid in the indictment were packed. The prisoner got into the waggon, and, after groping about on his hands and knees, laid hold of this parcel of currants, and had got near the tail of the waggon with them when he was apprehended. The parcel was afterwards found near the middle of the waggon. The jury found the prisoner guilty; but as he had not carried the goods out of the waggon, the court doubted whether this was a sufficient *asportation* to constitute the crime of larceny. The judgment was accordingly respited, and the case reserved for the consideration of the twelve judges; and they were unanimously of opinion, That as the prisoner had removed the property from the spot where it was originally placed, and the jury had found that he had so removed it with intent to steal, it was a sufficient *taking and carrying away* to constitute the offence. *Leach's Cas. in Cr. Law*, 230.

The

The following case was reserved by Mr. justice Nares for the consideration of the twelve judges. On the *Acton* road a person got into a waggon, with intent to steal a parcel of goods, which lay, as a pocket of hops would, at its length. He had raised it up, and placed it upon its end, in a perpendicular posture; but he had not removed it from the place where it originally lay in the waggon. He had cut the package open with a knife, and was proceeding to take out the goods which it contained; but, before he had taken out the goods, he was detected; and the judges were unanimously of opinion, that as he had not removed the bale from the spot on which it laid, there was not a sufficient taking, or carrying away to constitute a larceny, and the prisoner was discharged. *Leach's Cas. in Cr. Law, 229.*

And in the case of *Edward Farrell*, who was indicted for *Farrell's case*. robbery, at the Old Bailey July sessions 1787, it was found that the prisoner stopped the prosecutor as he was carrying a feather-bed on his shoulders, and told him to lay it down or he would shoot him. The prosecutor laid the bed on the ground; but before the prisoner could take it up so as to remove it from the spot where it lay, he was apprehended. The judges were of opinion, That the offence was not compleated, and the prisoner was discharged. *Leach's Cas. in Cr. Law, 299.*

A man was adjudged guilty of larceny who had taken a horse in a close with intent to steal him, and was apprehended before he could get him out of the close. 3 *Inst.* 109.

A wife may be guilty of larceny by stealing the goods of a stranger; but not by stealing the goods of her husband. 1 *Haw.* 93.

Lord *Hale* condemns what others have asserted, that extreme necessity will justify taking so much of another's victuals as will save him from starving, and says, that this rule by the law of *England* is false; and therefore if a person being under necessity for want of victuals or cloaths, steals another man's goods, it is felony. 1 *H. H.* 54.

An alien whose sovereign is in amity with the crown of *England*, residing here, and receiving the protection of the law, owes a local allegiance to the crown during the time of his residence; and if, during that time, he shall commit an offence, he shall be liable to be punished for it, even as a natural born subject. For his person and personal estate are as much under the protection of the law, as the natural born subject's: and if he is injured in either, he has the same remedy at law for such injury. *Foss.* 185.

So

So also, an alien whose sovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded against in like manner; for he owes a temporary local allegiance, founded on that share of protection which he receives. *Id.*

A prisoner of war.

And if a prisoner of war, though not properly subject to the municipal laws of this realm, commits any offence against the law of nations, or the light of nature and the fundamental laws of all society, he is liable to answer in the ordinary course of justice, as other persons offending in like manner are. As in the case of *Peter Molieres*, a French prisoner, who was indicted at the gaol-delivery for the city of *Bristol* in *August* 1758, before *Sir Michael Foster*, for privately stealing in the shop of a goldsmith and jeweller, a diamond ring, valued at 20*l.* *Sir Michael* says, he thought it highly improper to proceed capitally upon a local statute, against a prisoner of war; and therefore advised the jury to acquit him of the circumstance of stealing in the shop as by the statute, and to find him guilty of simple larceny to the value laid in the indictment. Accordingly, he was burnt in the hand, and sent to the prison appointed for *French* prisoners. *Id.* 188.

Mere personal goods, are the objects of larceny; for if the personal goods favour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold: therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones dug out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

Thomas Westbeer was indicted for stealing a parchment writing, purporting to be a commission, dated in the reign of queen *Anne*, empowering the commissioners therein named to enter and ascertain the boundaries of the manors of *Bradbury* and *Hartshorne*; but this commission being an instrument concerning the realty, the prisoner was acquitted of the larceny. *Old Bailey* January session, 1739.

Stealing any record or process.

Ripping, cutting, or breaking lead or iron, with intent to steal.

But by the 8 *H. 6. c. 12.* Any person who shall steal any record or process belonging to any of the courts at *Westminster*, by reason whereof any judgment shall be reversed, he shall be guilty of felony.

But by the 4 *G. 2. c. 32.* it is enacted, That every person who shall steal, rip, cut, or break, with intent to steal, any

any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court-yard, fence, or outlet belonging to any building; he, his aiders and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of felony, and be transported for seven years.

And by the 21 G. 3. c. 68. If any person shall steal, rip, cut, break, or remove, with intent to steal, any copper, brass, bell-metal, utensil, or fixture, being fixed to any building, or in any garden, orchard, court-yard, fence, or outlet belonging to any building; or any iron rails or fencing set up or fixed in any square, court, or other place; he, his aiders and abettors, and all who shall knowingly buy or receive the same, shall be guilty of felony, and transported for seven years, or detained in prison and kept to hard labour, not exceeding three years, nor less than one; and within that time, if the court shall think fit, shall be once or oftener, but not more than thrice, publicly whipped.

Ripping, cutting, breaking, or removing, copper, brass, bell-metal, &c.

The goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt, or other *chose* in action. 1 Haw. 93.

By the 2 G. 2. c. 25. Any person who shall steal any Exchequer orders or tallies, or other orders, intitling any other person to an annuity or share in any parliamentary fund; or any Exchequer bills, Bank-notes, South Sea bonds; East India bonds; dividend warrants of the Bank, South Sea company, East India company, or any other company; bills of exchange; navy bills or debentures; goldsmiths notes for payment of money; or other bonds or warrants, bills, or promissory notes for payment of money, shall be guilty of felony, with or without the benefit of clergy, in the same manner as he would have been, if he had stolen any other goods of the like value with the money due thereon: but not to work corruption of blood.

Stealing Exchequer orders, or tallies, Exchequer bills, Bank notes, South Sea bonds, East India bonds, dividend warrants, &c.

It has been declared felony in a servant of the post-office, to steal a *single* bank-note from a letter committed to his care, though the statute only makes it felony to steal *bank-notes*, in the plural; as in the case of *Thomas Hassel*, at the Old Bailey, October 16, 1730. Sir *Philip Yorke*, then attorney-general, and afterwards lord chancellor, was counsel for the crown. On arguing this point, he observed, That it was a most unreasonable construction to say, that the legislature intended to make it felony to steal two notes of five pounds

Stealing a Bank-note out of a letter.

pounds each, and yet that it should not be felony to steal one note of ten thousand pounds. *Leach's Cas. in Cr. Law, 1.*

Those beasts which are for the provision of man, when reclaimed, are within the protection of the law, and it is felony to steal them; but dogs, cats, bears, foxes, monkeys, ferrets, and the like, which, however they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die: but yet the stealing of an hawk, knowing it to be reclaimed, is felony by the common law and by statute, in respect of that very high value which was formerly set upon that bird. *1 Haw. 93.*

Goods not the property of any one.

The taking of goods, whereof no one had a property at the time, cannot be felony; and therefore he who takes any treasure trove, or a wreck, waif, or stray, before they have been seized by the persons who have a right thereto, is not guilty of felony, but shall be punished by fine, &c. *1 Haw. 94. 3 Inst. 109.*

But the taking of these must be, where the party who takes them, really believes them to be such, and colours not a felonious taking under such a pretence; for then every felon would cover his felony under that pretence. *1 H. H. 506.*

Fish in a river.

Neither shall he who takes fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. *1 Haw. 94.*

It also seems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that he may commit larceny, in taking such or any other creatures *feræ naturæ*, if they are fit for food, and reduced to tameness, and known by him to be so. *Id.*

And it is said there may be felony in taking goods the owner whereof is unknown; in which case the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown; and it seems that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape. *Id.*

Hiring a chaise, and converting it wrongfully.

To hire a chaise for any length of time, with intention to convert it wrongfully to the use of the hirer, is larceny, if it be in fact so converted. *Semple's Case, July session, 1786.*

If a parcel be accidentally left in a hackney coach, and the coachman, instead of restoring it to the owner, detains it, opens it, destroys part of its contents, and borrows money

on

on the rest, he is guilty of larceny. *W. Wynne's Case, April session, Old Bailey, 1786.*

It has been adjudged, that a person who takes off a shroud from a dead corpse, may be indicted as having stolen it from him who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Though the thing stolen must be only above the value of 12*d.* to make it grand larceny, the learned editor of *Hale's History of the Pleas of the Crown* observes, that in former times, though the punishment of theft was capital; yet the criminal was permitted to redeem his life by a pecuniary ransom; but in the 9 *H. 1.* it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But considering the alteration in the value of money, the severity of it is much greater now than it was then; for 12*d.* would then purchase as much as 40*s.* will now: and yet a theft above the value of 12*d.* is still liable to the same punishment. Upon which Sir *H. Spelman* justly observes, that while all things else have risen in their value, and grown dearer, the life of man has become much cheaper: hence he takes occasion to wish, that the ancient tenderness of life were again restored. 1 *H. H.* 12.

Comparative value of money.

And lord *Coke*, observing that when the statute of 3 *Ed. 1.* was made, which makes stealing of goods above the value of 12*d.* grand larceny, the ounce of silver was of the value of 20*d.* and now it is of the value of 5*s.* and above, draws this conclusion, that the thing stolen ought to be reasonably valued, that is, having respect to the great alteration in the value of money. 2 *Inst.* 189, 190. For 20*s.* were then a real pound weight; which name we still retain, though the weight is much diminished.

Where two persons or more, together, steal goods above the value of 12*d.* every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. 1 *Haw.* 95.

More than one person.

If a person pulls off the wool from another's sheep, or strips their skins with an intent to steal them, he is guilty of felony. *Crom.* 36.

There is a special case, in which a man may be guilty of felony in stealing goods, the absolute property of which is in himself: as where one who has delivered goods to a carrier, taylor, &c. shall afterwards, with an intent to charge such carrier or taylor, fraudulently and secretly take them away. *Cro. Eliz.* 536. *Mo. Pl.* 981.

A man stealing his own goods.

II. Of Petit Larceny.

Petit larceny.

As grand larceny is a felonious and fraudulent taking of the mere personal goods of another above the value of 12*d*.; so it is petit larceny where the thing stolen is but of the value of 12*d*. or under. In the several other particulars above-mentioned, petit larceny agrees with grand larceny.

1 *Haw.* 95.No accessaries
in petit larceny.

In petit larceny there can be no accessaries, either before or after. 1 *H. H.* 530.

And where a person is indicted for stealing goods to the value of 10*s*. and the jury find specially, as they may, that he is guilty, but, that the goods are worth only 10*d*.; he shall not have judgment of death, but only as for petit larceny.

Petit larceny is
felony, and
how punishable.

It seems that all petit larceny is felony, and consequently requires the word *feloniously* in the indictment for it; yet it is certain, that it is not punishable with the loss of life or lands, but only with the forfeiture of goods, and whipping, transportation, or other corporal punishment. 1 *Haw.* 95.

Of bailing those
charged with
petty larcenies.

By the 3 *Ed.* 1. c. 15, Persons indicted of petit larceny, who have not been guilty of some other larceny aforetime, are bailable by justices of the peace. And it seems agreed that there is no necessity that they should be of good reputation: but if the crime be open and manifest, it seems they ought not to be bailed; yet if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 *Haw.* 101.

Justice to com-
mit or bail.

For a justice of the peace, before whom an offender shall be brought for petit larceny out of sessions, may not punish such offender by his discretion, and then let him go; but he must have him committed or bailed, that he may come to his trial, as in cases of other felonies. And if, upon trial, the jury shall find the goods stolen to exceed 12*d*. in value, the offender shall have judgment to die. *Dalt.* c. 154.

III. Larceny from the Person.

Larceny from
the person.

Larceny from the person must be committed without putting the person in fear. 1 *Haw.* 95.

If the goods are taken from a man's person, the offence receives a farther degree of guilt; and if it puts him in fear, it is called robbery.

If done privately
it is not entitled
to clergy.

If larceny from the person be done privily without his knowledge, by picking of pockets, or otherwise, it is ex-
cluded

cluded from the benefit of clergy by the 8 *Eliz. c. 4.* (Provided the thing stolen is above the value of 12*d.* 2 *H. H. 336.*) But this statute does not extend to accessaries, either before or after. 2 *Haw. 350.*

But if done open and avowedly before his face, it is ^{When done} within the benefit of clergy. 1 *Haw. 97.* Except where it openly is committed in a dwelling-house, or out-house thereunto belonging, to the value of 40*s.*; from which the benefit of clergy is taken away by the 12 *Ann. st. 1. c. 7.*

IV. Larceny from the House.

It is to be observed, that this is to be understood where the offence falls short of burglary.

By the 39 *Eliz. c. 15,* it is enacted, That every person who shall be convicted of the feloniously taking away in the day-time, any money or goods of the value of 5*s.* in any dwelling-house, or outhouse thereunto belonging, and used to and with the same, though no person be therein, shall be guilty of felony without benefit of clergy. ^{Robbing a house to the value of 5*s.* no person being therein.}

This, however, requires an actual breaking, and not entering by the door's being open. 1 *H. H. 548.*

And by the 3 *W. c. 9,* Every person who shall feloniously take away any goods being in any dwelling-house, any person being therein, and put in fear; or shall rob any dwelling-house in the day-time, any person being therein, he, his comforters and abettors, shall be guilty of felony without benefit of clergy. ^{Robbing a dwelling house, any person being therein.}

The *stat. 12 Ann. c. 7,* recites, Forasmuch as divers wicked and ill-disposed servants and other persons are encouraged to commit robberies in houses, by the privilege of demanding the benefit of their clergy; and therefore enacts, that all and every person or persons that shall feloniously steal any money, goods or chattels, wares or merchandizes, of the value of 40*s.* or more, being in any dwelling-house or out-house thereunto belonging, although such house or out-house be not actually broken by such offenders, and although the owner of such goods, or any other person or persons, be or be not in such house or out-house, or shall assist or aid any person or persons to commit any such offence, shall be debarred from the benefit of clergy. ^{Stealing out of an house to the value of 40*s.* no person being therein, and the house not broken.}

Dwelling-house] The penalties on stealing in a dwelling-house do not extend to the case of a prisoner stealing the property of another in his own dwelling-house: at the Old Bailey September sessions 1784, *Elizabeth Thompson* and ^{Offender stealing in his own house: Elizabeth Thompson's case.}

Mary Macdaniel were indicted on the 12 Ann. c. 7, for stealing seven guineas, the monies of *Thomas Clifford*, in the dwelling-house of the said *Mary Macdaniel*. It appeared in evidence, that the house in which the larceny was committed, was in fact the house of *Mary Macdaniel*; and the court held, that the meaning of the legislature did not extend to the case of a person stealing in his own house. *Leach's Cas. in Cr. Law.* 309.

Breaking a
house in the day
time.

By the 1 Ed. 6. c. 12. s. 10, Every person who shall be convicted of breaking any house in the day time, any person being therein, and put in fear, shall be guilty of felony without benefit of clergy.

Though no-
thing be taken.

And this though nothing be actually taken: but it requires not only an actual breaking, and putting in fear, but also an entry *with an intent to commit felony*, and so to be laid in the indictment. 1 H. H. 548.

Shop-lifting to
the value of 5s.

By the 10 & 11 W. c. 23, Every person who shall by night or by day, in any shop, warehouse, coach-house, or stable, privately and feloniously steal any goods, wares, or merchandizes, to the value of 5s, though it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Warehouse] In the case of *John Howard* at the Old Bailey, July 3, 1751. He was indicted on this statute, for privately stealing goods, the property of Messieurs *Fludyer* and company, in the warehouse of *John Day*. There was another count in the indictment, charging that the prisoner stole the goods of *John Day* in his warehouse. The case upon evidence appeared to be, that *John Day* kept a common warehouse by the water-side, where merchants usually lodged goods intended for exportation, till they could have an opportunity of putting them on board. The goods in the indictment were sent by *Fludyer* and company to this warehouse, in order to be put on board a vessel for exportation, and were stolen by the prisoner in this warehouse. The court was of opinion, that this is not a case within the statute. For by the word *warehouse* in the statute is meant, not a mere repository for goods, but such places where merchants and other traders usually keep their goods for sale, in the nature of shops, and whither customers go to view them. And though the goods in this case might with propriety enough be charged to be the goods of *John Day*, since he had the charge and possession of them, which made him answerable to his principals for them; yet still the same objection recurs; his warehouse was not a place for sale, but merely safe-custody.

custody. Accordingly the larceny being fully proved, the prisoner was by the direction of the court found guilty of larceny, to the value laid in the indictment, and acquitted of stealing privately in the warehouse. — It has been generally held, that the meaning of this act, with regard to *shop-lifting*, is, that the goods must be such as are usually exposed to sale in the *shop*, and not any other valuable thing which may happen to be put there. And it seems that the same equitable construction should take place with regard to *warehouses*. The goods should be such as are usually exposed to sale in such places. And though *coach-houses* and *stables*, which are also named in the act, are not places for sale, yet still in the construction of so penal a law, it will not be amiss to carry the same equity as far as may be with regard to them. The goods should be such as are usually lodged in those places. *Fost. 77.*

The meaning of the stat 10 & 11 W. c. 23. with regard to shop-liftings

Further elucidations with regard to what shall be considered a *shop*, &c. within the 10 & 11 W. c. 23. Old Bailey July session, 1784. This was an indictment on the statute of 10 & 11 W. c. 23. for privately stealing a watch, the property of Sir Robert Heskett, in the shop of John Alcock. Sir Robert Heskett had sent his watch to his watch-maker, Mr. Alcock, for the purpose of being repaired, and it hung in the shew-glass in Mr. Alcock's shop at the time it was stolen. The court said, that the meaning of the act of parliament, upon which the capital part of the indictment was founded, had always been restrained to such goods only as are exposed to sale in shops; and did not extend to mere *repositories* for goods, though they might appear in the nature of *shops*; and that as Mr. Alcock's shop was not, with respect to this watch, a *place of sale*, but a mere *repository*, the prisoner ought to be acquitted of the capital part of the charge. The jury accordingly found him guilty of the simple larceny only, and he was transported for seven years. *Leach's Cas. in Cr. Law, 307.*

A shop, &c. further ascertained agreeable to the 10 & 11 W.

If it shall appear on the evidence, as it often does, that those places were *broke open* at the time of the larceny, the case (as it seems) will not come within the act. For the words are, if any person shall *privately steal*, which seems to exclude all cases, where any degree of force is used to come at the goods. *Id. 79.*

The act mentions stealing any *goods, wares, or merchandizes*, Money not included in this statute. For though the word *goods* may in a large sense take in money, and often does; yet being connected with *wares and merchandizes*, the

safer construction of so penal a statute will be to confine it to goods of like kind, goods exposed to sale. *Id.*

And it was so ruled, upon the same principle, at *Maidstone Lent assizes 1732*, in the case of *George Grimes*, indicted on the statute, 24 G. 2. c. 45. for stealing a considerable sum of money out of a ship in port; though great part of it consisted in *Portugal money*, not made current by proclamation, but commonly current. *Id.*

And at the Old Bailey January session 1755, *Thomas Mills* was tried before Mr. Justice *Birch*, on the statute of 10 & 11 W. c. 23. for stealing fifteen shillings, the property of *John Clarke*, privily in his shop: it appeared that the prisoner had by some means concealed himself behind the counter, and taken an opportunity of robbing the till of the money charged in the indictment. The court held, that money is not included in the words *goods, wares, or merchandizes*, within the meaning of this act of parliament; and the prisoner was accordingly acquitted of the capital part of the offence.

Reward for convicting an offender; Exemption from parish offices.

Every person who shall apprehend any one guilty of breaking open houses in a felonious manner; or of privately and feloniously stealing *goods, wares, or merchandizes*, of the value of 5, in any *shop, warehouse, coach-house, or stable*, though they be not broken open, and though no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate without fee, under the hand of the judge certifying such conviction, and within what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned, as to him shall seem just and reasonable.

And if any person shall happen to be slain by any such housebreaker, or other felon as aforesaid, in endeavouring to apprehend him, the executors or administrators of such person slain shall have the like certificate.

And such certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted, for which he shall have 1s.

And it may be once assigned over, and no more.

And the original proprietor or the assignee thereof, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was committed.

But

But the certificate shall not be assignable, after it has been once made use of, to exempt any person from such office.
10 & 11 W. c. 23.

E. 29 G. 2. K. & Davis. The defendant being assignee of a certificate under this act, was appointed by the trustees under the act of 22 G. 2. to be collector of the parish rates for the repair of the roads within the parish of *St. Leonard, Shore-ditch*; and, refusing to take the office on him, insisting that he was exempted, by the benefit of his certificate, from all *parish and ward offices*, he was convicted by a justice, and the conviction was confirmed, upon appeal; but on moving it by *certiorari* into the King's Bench, the conviction and affirmance thereof were quashed. *MS.*

And as a further reward, every person who shall apprehend any one guilty of the felonious breaking and entering of any house in the day-time, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the felony was committed, and that such felon was taken by the person claiming the reward; and if any dispute shall arise between the persons claiming, the judge shall by such certificate appoint the same to be paid among the parties claiming the same, in such shares and proportions as to him shall seem just and reasonable.

40l. reward for convicting a person of breaking and entering a house in the day-time.

And by the 5 Ann. c. 31, On tender of such certificate to the sheriff, and demand made, he shall pay 40l. to the person so entitled, without fee, within one month after such tender and demand; on pain of forfeiting double, with treble costs.

40l. to the executors, &c. of a person killed.

Also by the same statute, / 2, If any watchman or other person be killed in endeavouring to apprehend any such house-breaker, his executors or administrators shall be entitled to receive the sum of 40l. in like manner.

And by the same statute / 3, The sheriff, on producing the certificates and receipts for the said rewards, may deduct the same in his accounts; and if he shall not have money in his hands, he shall be repaid out of the treasury, on certificate from the clerk of the pipe.

Sheriff to be paid out of the treasury.

Or he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without fee. 3 G. c. 15. / 4.

And moreover, if any person, being out of prison, shall have committed any such house-breaking in the day-time, as aforesaid, and shall afterwards discover two or more the like offenders, so as two or more be convicted, he shall have the

A reward of 40l. and a pardon, for convicting accomplices.

reward of 40*l.* and all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an appeal. 5 *Ann. c. 31.*
f. 4.

V. Larceny on a navigable River.

Stealing goods to the value of 40*s.* in any ship, barge, &c on a navigable river.

By the 24 *G. 2. c. 45*, it is enacted, That all persons feloniously stealing any goods or merchandize of the value of 40*s.* in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging thereto, from or off any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present or assisting therein, shall be guilty of felony without benefit of clergy.

Unlawfully receiving ropes, cordage, tackle, goods, or cutting or damaging cordage, cables, and buoys, &c.

And by the 2 *G. 3. c. 28*, Persons who shall navigate bum-boats on the river *Thames*, for the purpose of selling liquors, fops, tobacco, fruit, greens, gingerbread, fops, or other such like ware, except such boats as shall be entered at the *Trinity house*; and persons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, stores, or merchandize of any vessels in the river; or cutting, damaging, and spoiling any cordage, cable, buoys, buoy rope, headstall, or other fast or rope belonging to any ship in the river, with intent to steal the same, shall be punished as the said act directs. But, as the said act is long and local, reference may be had thereto, by those whom it may particularly concern.

VI. Other Kinds of Larceny.

Robbing in a booth or tent.

By the 5 & 6. *Ed. 6. c. 9, f. 5*, Any person found guilty of robbing another in any booth or tent, in any fair or market, the owner, his wife, children, or servants, being within, whether they be sleeping or waking, shall suffer as felons without benefit of clergy.

Stealing linen, fustian &c.

For larceny in stealing linen, fustian, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dyed, to the value of 10*s.*; see the title **LINEN CLOTH**.

Stealing woollen cloth off the tenters

For larceny in stealing woollen cloth off the tenters, in the night-time; see **WOOLLEN MANUFACTURE**.

For

For larceny in stealing deer in parks, conies or hares in Deer.
warrens, or fish in ponds; see title GAME.

For larceny in stealing cattle or sheep; see the titles Cattle or sheep.
CATTLE, and SHEEP.

And with respect to larceny in stealing hawks or swans;
see GAME.

VII. Receiving stolen Goods.

By the 3 W. c. 9, Any person who shall buy or receive Receiver an ac-
any stolen goods, knowing them to be stolen, shall be cessary after the
deemed an accessory after the fact, and suffer accordingly. fact, by 3 W.

f. 4.

And by the 5 Ann. c. 31. f. 5, Any person who shall buy Receiving stolen
or receive any stolen goods, knowing them to be stolen; or goods, or har-
shall receive, harbour, or conceal any felons or thieves, bouring felons
knowing them to be so, shall be deemed accessory to the fe- by 5 Ann.
lony; and being convicted on the testimony of one witness,
shall suffer death as a felon convict. But he shall be entitled
to his clergy.

Also by the 4 G. c. 11. f. 1, Any person convicted of Receiver to be
receiving or buying stolen goods, knowing them to be transported for
stolen, may be transported for fourteen years. 14 years, by 4
G.

In the case of *K. v. Davidson*, at Carlisle assizes 1766,
Mary Davidson was indicted for stealing bags containing
160*l.* in money out of a dwelling-house; and *Isabel* and
Margaret Carter were indicted in one count, for receiving
the money, knowing it to have been stolen; and in a second
count for harbouring and concealing *Margaret Davidson*,
knowing her to have been guilty of that felony. An ob-
jection being made that money is not within the acts of par-
liament relating to the receivers of stolen goods, Mr. Justice
Bathurst, who tried them, was clearly of that opinion, and
that the counsel for the prosecutor should therefore apply
their evidence only to the charge of harbouring and con-
cealing the felon. They were all convicted, and the prin-
cipal received judgment of death. The accessories had their
clergy, and were burnt in the hand.

Money is not within the meaning of the words goods and Money cannot
chattels. At the Old Bailey, in April sessions 1782, *Ann* be deemed goods
Guy was indicted as an accessory after the fact, in receiv- or chattels. *Ann*
ing two guineas, she well knowing them to have been *Guy's case*.
stolen. Mr. *Baron Eyre* said he was clearly of opinion,
That there cannot be an accessory after the fact for receiv-
ing money. The statutes of 3 W. c. 9. f. 4. and 5 Ann.

c. 34 f. 5. say, That whoever shall buy or receive any *goods* or *chattels* that shall be feloniously stolen, knowing the same to be stolen, shall be deemed an accessory after the fact to such felony; but *money* cannot be well considered as *goods* or *chattels* within the meaning of these acts. The prisoner was acquitted. *Leach's Cas. in Cr. Law. 234.*

Nor bank-notes.

And in *William Morris's* case, at the Old Bailey in *July* sessions 1787, it was determined by a majority of ten judges, assembled at *Serjeants-inn* hall (lord *Mansfield* and lord chief-baron *Eyre* being absent) that *bank-notes* are not *goods* and *chattels* within the meaning of the statutes of 3 *W. c. 9.* and 5 *Ann. c. 31.*

There can be no accessory in petit larceny.

Where the principal felon is found guilty to the value of 10*d.* that is, of petit larceny only, the receiver, knowing the goods to have been stolen, cannot be transported for fourteen years, and ought not to be put on his trial. For the acts which make receivers of stolen goods knowingly accessories to the felony, must be understood to make them accessories in such cases only, where, by law, an accessory may be; and there can be no accessory to petit larceny. This was unanimously determined by all the judges, in the case of *Abraham Evans*, at the Old Bailey in *May* 1749. And *Evans* was discharged. *Fost. 74.*

Though regularly the accessory cannot be tried till the principal is convicted; yet,

Receiver, how punished when the principal is not to be found.

By the 5 *Ann. c. 31.* If the principal felon cannot be taken, so as to be prosecuted and convicted, yet the buyer and receiver of stolen goods may be prosecuted as for a misdemeanor, and punished by fine or imprisonment, or other such corporal punishment as the court shall think fit; which shall exempt him from being punished as accessory, if the principal shall be afterwards taken and convicted. *f. 6.*

Where the principals have been executed.

But in the case of *K. v. Wild*, the indictment was for a misdemeanor, in receiving stolen goods, knowing them to be stolen. It appeared, in the prosecutor's evidence, that the felons had been convicted and executed. It was therefore objected, that this indictment would not lie, being only given in case the felon cannot be taken; this being only a jurisdiction given under those particular circumstances. The chief-justice was of the same opinion, and the defendant was acquitted. *Sir. 57.*

Receivers of stolen lead, iron, copper, brass, bell-metal, and solder, to be transported for fourteen years by 29 *G. 2.*

The 29 *G. 2. c. 30.* recites, That whereas the pernicious practice of stealing lead, iron, copper, brass, bell-metal, and solder, fixed to, or lying, or being in or upon houses, out-houses, mills, warehouses, workshops, and other buildings, areas, vaults, yards, gardens, orchards, or other places,

places; and also the stealing of such materials from ships, boats, and other vessels, and from off wharfs, keys, and other places, is become a great evil, by reason of the difficulty in apprehending and convicting the thieves, and in discovering the buyers and receivers; it is therefore enacted, that every person who shall buy or receive any of the same, knowing the same to have been stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal, or solder, by suffering any door, window, or shutter to be left opened or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive any of the same, at any time, in any clandestine manner, shall, on conviction by due course of law, though the principal felon has not been convicted, be transported for fourteen years. *f. 1.*

And by the same statute, *f. 2.* One justice, on complaint on oath by any credible person, that there is cause to suspect that stolen lead, iron, copper, brass, bell-metal, or solder, is concealed in any dwelling-house, outhouse, yard, garden, or other place, may, by his warrant, cause such place to be searched in the day-time; and if any of the same, suspected to be stolen, shall be found therein, may cause the same, and the person in whose house or other place the same shall be found, to be brought before two justices: and if he shall not give an account, to the satisfaction of such justices, how he came by the same, or shall not, in some convenient time to be set by the said justices, produce the party of whom he bought or received the same, he shall be adjudged guilty of a misdemeanor.

And every constable in his constablewick, beadle in his district, and watchman upon duty, shall apprehend, or cause to be apprehended, every person who may reasonably be suspected of having, carrying, or conveying, after sun-setting, and before sun-rising, any of the said materials, suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before two justices: and if the person so apprehended conveying the same, shall not produce the person from whom he bought or received them, or some other credible witness to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of such justices, how he came by them, he shall be adjudged guilty of a misdemeanor.

f. 3. And in either of the said cases, two justices of the peace may cause the said materials to be deposited with the churchwardens or overseers of the poor where the same were

On oath that there is cause to suspect lead, &c. is concealed in any place, a justice may grant a warrant to search such place.

A constable, beadle, or watchman, may apprehend a person reasonably suspected, and take him before two justices.

The materials found to be deposited with the churchwardens

or overseers,
and descriptions
of them adver-
tised.

were found, or in any other convenient place, for any time not exceeding thirty days, and, in the mean time, may order the said churchwardens or overseers, or one of them, in every parish within the bills of mortality, to insert an advertisement in some public paper; and elsewhere cause notice to be given by some public crier, and by fixing on the church or chapel-door, notice describing such materials, and where deposited: and any person who can prove his property thereto, on oath, to the satisfaction of such two justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing, and giving public notice of the same. And if, at the end of the thirty days, no person shall prove his property thereto, the same shall be sold for the best price that can be had: and after deducting the charges, half of the money arising from such sale shall go to the person apprehending, and half to the poor of the parish where the offence shall be committed (if it is known) or else where the conviction shall be. /s. 4.

Persons to
whom such ar-
ticles are offered
for sale, if they
are reasonably
suspected to
have been
stolen, may ap-
prehend the
suspected per-
son, and take
him and the ma-
terials before a
justice.

And every person, to whom any of the said articles shall be offered to be sold, pawned, or delivered (there being reasonable cause to suspect that they were stolen, or unlawfully come by), shall apprehend, and take before a justice (having it in his power so to do) the person so offering them, together with the said materials: and such person shall be dealt with, and the materials deposited and disposed of, as if he had been apprehended by the constable, beadle, or watchman: and if it shall appear upon the oath of any person, tho' he was concerned in stealing the said materials, if corroborated with other credible circumstances, to the satisfaction of two justices, that there was reasonable cause to suspect that they were stolen or unlawfully come by, and that the person to whom the same was offered did not (having it in his power so to do) apprehend, secure, and take before a justice, the person who offered the same; then the person to whom the same was offered, shall be adjudged guilty of a misdemeanor. /s. 5.

Penalties.

And for the two former misdemeanors, in having or carrying any of the said goods, every person shall forfeit for the first offence 40s. for the second 4/. and for every subsequent offence 6/; and for the other misdemeanor, in not carrying a suspected person before a justice, he shall forfeit for the first offence 20s. for the second 40s. and for every subsequent offence 4/. by distress: half to the informer, and half to the overseers for the use of the poor of the parish where the offence was committed (if known), or otherwise, where the conviction shall be. And for want of sufficient distress, then

then to be committed to the common gaol, or other prison or house of correction, for one month for the first offence, for the second two months, and for every subsequent offence till discharged by order of sessions. *f. 6.*

The conviction to be on parchment, and certified to the next sessions, and there filed; in the form or to the effect following, viz.

Middlesex, to wit.] *Be it remembered, that on the*
day of *in the year* *A. B. was convicted before*
us *justices of the peace for* *of a misdemeanor,*
in having in his possession lead, iron, copper, brass, bell-metal,
or solder, suspected to be stolen, or unlawfully come by, and not
producing the party or parties of whom he bought or received
the same, nor giving a satisfactory account how he came by
the same [or in having, carrying, or conveying of lead, iron,
copper, brass, bell-metal, or solder, suspected to be stolen or
unlawfully come by, and not producing the party or parties
from whom he bought or received the same, nor any credible
witness to depose upon oath the sale or delivery thereof, and
not giving a satisfactory account how he came by the same;
or, of neglecting to apprehend and secure the person who
brought and offered to pawn, sell, or deliver lead, iron, cop-
per, brass, bell-metal, or solder, suspected to be stolen or un-
lawfully come by; as the case may be:] Given under our
hands and seals the day and year aforesaid.

Form of con-
viction.

Which conviction shall not be removed by certiorari, but be final to all intents and purposes. *f. 7.*

No certiorari
allowed.

And any person, being out of prison, who shall commit any felony, by stealing any of such materials, and afterwards shall discover two or more persons who shall buy or receive any of them, knowing them to be stolen, so as two or more be convicted, he shall have a pardon, which shall also be a bar to an appeal. *f. 8.*

Principal, ac-
cusing receivers,
shall be par-
doned.

And if any person shall be concerned in stealing any such materials, and shall afterwards, being out of prison, discover any person to whom he offered to sell, pawn, or deliver the same, so as he be convicted of such misdemeanor; he shall not be liable to be prosecuted for such stealing. *f. 9.*

By the 21 G. 3. c. 69, it is enacted, That every person who shall buy or receive any pewter pot or other vessel, or any pewter in any form, knowing it to be stolen or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window, or shutter to be left open

Receivers of
pewter-pots, or
other vessels.

open or unfastened between sun-setting and sun-rising; or shall buy or receive the same in any clandestine manner; he shall, though the principal felon has not been convicted, be transported for a time not exceeding seven years, or detained in prison to hard labour not more than three years, nor less than one; and within that time (if the court shall think fitting) to be once or oftener, but not more than thrice, publicly whipped.

And by the 22 G. 3. c. 58, it is enacted, That where any goods (except lead, iron, copper, brass, bell-metal, and solder) shall have been stolen, whether the offence amounts to grand larceny, or to some greater offence, or only to petit larceny, where the offender has been convicted of grand larceny or some greater offence, every person who shall buy or receive the same, knowing them to have been stolen, shall be guilty of a misdemeanor, and punished by fine, imprisonment, or whipping, as the court of quarter-sessions (who are hereby empowered to try him), or any other court before whom he shall be tried, shall think fit to inflict, though the principal be not convicted: and if the felony amounts to grand larceny, or some greater offence, and the person committing such felony has not been before convicted, such offender shall be exempted from being punished as accessory, if the principal shall be afterwards convicted. *f. 1.*

Searching suspected places for stolen goods.

And by the same statute, *f. 2.* One justice, on oath before him made, that there is reason to suspect that stolen goods are knowingly concealed in any house or other place, may, by his warrant, cause such house or place to be searched in the day-time; and the person concealing, or in whose custody they shall be found, shall be guilty of a misdemeanor, and punished in the manner aforesaid. *f. 2.*

Constable, beadle, or watchman, may apprehend a reasonably suspected person by 22 G. 3.

And every constable in his constablewick, beadle in his ward, and watchman on duty, may apprehend any person, reasonably suspected of having or carrying, at any time after sun-setting and before sun-rising, any goods suspected to be stolen, and take him before a justice to be dealt with according to law; and on conviction of the offence, he shall be adjudged guilty of a misdemeanor, and imprisoned not exceeding six calendar months, nor less than three. *f. 3.*

And by *f. 4.* of the same statute, Any person, to whom any goods reasonably suspected to be stolen shall be offered to be sold or pawned, may apprehend the person offering them, and carry him before a justice.

And

And by §. 5. of the same statute, Any person, being out of custody, or in custody, if under fifteen years of age, upon any charge of felony within the benefit of clergy, who shall have committed any felony, and shall afterwards discover two or more who have bought or received any stolen goods, so as two or more be convicted, shall have the king's pardon for all such felonies by him committed before such discovery, which shall also be a bar to an appeal.

By this act of 22 G. 3. c. 58, Receivers of any stolen goods and chattels (except lead, iron, brass, copper, bell-metal, and solder, the receiving of which is provided for by the 29 G. 2. c. 30.) may be prosecuted for the *misdemeanor*, though the principal felon be not before convicted, or whether he is amenable to justice or not. And upon this act it has been determined, that the unconvicted principal is an admissible witness against the receiver. Determined by the twelve judges, to the consideration of whom it was submitted, in the case of *William Haslam*, tried at the Old Bailey, May session, in 1786.

VIII. Advertising a Reward for stolen Goods, or receiving a Reward for causing them to be restored.

By the 25 G. 2. c. 36, it is enacted, That if any person shall publicly advertise a reward, with no questions asked for the return of things stolen or lost, or make use of words, in any advertisement, purporting that such reward shall be given without seizing or enquiring after the person producing such thing; or shall offer to return to any pawnbroker, or other, the money lent thereon, or other reward for the return thereof; he, and the printer or publisher of such advertisement, shall respectively forfeit 50*l.* with costs, to him who shall sue in six months.

And by the 4 G. c. 11. §. 4, If any person shall take money or other reward, directly or indirectly, under pretence, or on account of helping any person to any stolen goods; he shall (unless he shall apprehend the felon, or cause him to be apprehended, and brought to trial, and give evidence against him) be guilty of felony in the same manner as if he had stolen the same.

IX. Detaining Goods suspected to be stolen.

By the 30 G. 2. c. 24, it is enacted, That if any person who shall offer, by way of pawn, pledge, exchange, or sale, any

Discovering accessories.

Penalty on advertising a reward for the return of goods stolen or lost, with the words, no questions asked.

Taking a reward to get stolen goods restored.

A person offering to pawn, sell, or ex-

change goods, not giving a satisfactory account of himself, may be detained with the goods.

any goods, shall not be able, or shall refuse to give a satisfactory account of himself, or how he became possessed thereof; or if there shall be any other reason to suspect that such goods are stolen, or illegally obtained; it shall be lawful for any person, his servants, or agents, to whom such goods shall be offered, to seize and detain such person and the goods, and to deliver him into the custody of the constable or other peace officer, who shall immediately convey such person and the said goods before a justice; and if such justice shall, upon examination and enquiry, have cause to suspect that the goods were stolen, or illegally obtained, he may commit such person to safe custody for any time not exceeding six days, in order to be further examined; and if it shall appear, to the satisfaction of such justice, that the said goods were stolen, or illegally or clandestinely obtained, he shall commit the offender to the common gaol, or house of correction, to be dealt with according to law.

And the person detaining him shall be indemnified.

But if such goods, so seized and detained, shall afterwards appear to be the property of the person who offered them to pawn, &c. or that he was authorised by the owner of them to pawn, exchange, or sell the same; yet the person who seized and detained him shall be indemnified for having so done. *s. 8.*

X. Expences of Prosecution and Conviction how paid.

Respecting the expences of conveying an offender to gaol, see COMMITMENT.

Prosecutor, if poor, shall be repaid his expences, and be allowed for his time and trouble, if the party is convicted.

By the 25 G. 2. c. 36, it is enacted, That the court before whom a person has been convicted of any grand or petit larceny, or other felony, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the county-treasurer to pay him what they shall judge reasonable, not exceeding the expences he sustained in carrying on the prosecution, with a reasonable allowance for his time and trouble: and the clerk of assize, or of the peace, shall make out such order, and deliver it to the prosecutor, on payment of 1s. and the treasurer shall pay it at sight, which shall be allowed in his accounts.

And by the 18 G. 3. if the party is acquitted, where there is a reasonable ground of prosecution.

And by the 18 G. 3. c. 19, it is enacted, That the court before whom any person has been convicted of any grand or petit larceny or other felony, or before whom any person has been acquitted of any grand or petit larceny or other felony, if it shall appear to the court that there was a reasonable ground of prosecution, and that the prosecutor had *bona fide* prosecuted; may order the treasurer to pay to such prosecutor

secutor what they shall think reasonable, not exceeding the expences he was put unto, making also (if in poor circumstances) a reasonable allowance for his trouble and time; which order the clerk of assize, or clerk of the peace, shall forthwith make out and deliver to him, on payment of 1s. and the treasurer shall pay the same on sight. And the justices in sessions may, from time to time, lay down or alter such regulations concerning costs or charges to be allowed by virtue of this act; which, after having received the approbation and signature of one or more of the judges of assize, shall be binding on all persons whatsoever.

Also by the 27 G. 2. c. 3. If a poor person shall appear on his recognizance, in such case, to give evidence, the court may allow him his reasonable charges, to be paid in like manner; the proper officer receiving 6d. for making out the order. Except in *Middlesex*, where the same shall be paid by the overseers of the poor of the parish where the person was apprehended.

A poor witness appearing on recognizance, to be also paid his charges,

And finally by the 18 G. 3. c. 19. it is enacted, That the court where any person shall appear on recognizance or *subpoena*, to give evidence concerning any grand or petit larceny or other felony, whether a bill of indictment be preferred or not, may order the treasurer to pay him what they shall think reasonable, not exceeding the expences he was put unto, making also, if he shall be in poor circumstances, a reasonable allowance for his trouble and time; which order the clerk of assize, or of the peace, shall make out and deliver to him, on being paid 6d. for the same; and the treasurer shall pay the same at sight.

And whether a bill be preferred or not, by 18 G. 3.

Leather.

THOUGH there are several acts unrepealed, which were made before the reign of James I. concerning leather; yet the statute of 1 Jac. c. 22. reduces all the acts into one relating to that commodity; therefore no prior statute on that subject can deserve attention. We shall arrange the subdivisions of this title in the following order:

I. Duties on Leather.

II. Of Hides in their raw State.

III. Of the tanning of Hides.

VOL. III. (26.)

E

IV. Of

IV. Of currying Hides.

V. Triers of Leather.

VI. Duty of the Searchers and Sealers of Leather.

VII. Of buying and selling Leather.

VIII. Manufacturing or exporting Leather.

IX. Importation of Leather Gloves or Mitts.

X. General Penalties and Forfeitures.

I. Duties on Leather.

Tanners to take out a licence.

By the 24 G. 3. c. 41. *sess.* 2. Every tanner shall take out a licence annually, for which he shall pay, if within the bills of mortality, 5^l; elsewhere 2^l. 10s. on pain of 30^l. *f.* 1.

And tawers.

Every tawer shall also take out a licence annually, for which he shall pay 1^l. on the penalty of 10^l. *Id.*

And dressers of cather in oil.

And every dresser of hides in oil shall take out a licence annually, for which he shall pay 2^l. on the penalty of 20^l. *Id.*

And curriers.

Every currier shall take out a licence annually, for which he shall pay 2^l. on the penalty of 20^l. *Id.*

And vellum and parchment makers.

And every maker of vellum or parchment shall take out a licence annually, for which he shall pay 1^l. on the penalty of 10^l.

And the person who shall take out such licences shall renew them annually, ten days at least before the end of the year, on the like penalty as aforesaid respectively. *Id.* *f.* 7.

Partnership.

But persons in partnership need only take out one licence for one house. *Id.* *f.* 8.

Who are deemed tawers or dressers.

By the 2 *Ann.* c. 11. *f.* 28. Collar-makers, glovers, bridle-cutters, and others, who dress skins or hides, or pieces thereof, in oil, allum and salt, or meal or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers.

Importation and exportation.

By the 27 G. 3. c. 13. A duty is laid on all hides and skins, vellum and parchment, imported; and drawbacks allowed on the exportation thereof *Sched.* (A).

And, after the duty shall be paid on importation, the officers of the customs shall cause every hide to be marked, to denote the payment of the duty. 9 *Ann.* c. 11. *f.* 6.

But by the 15 G. 3. c. 35. Raw or undressed goat skins were permitted to be imported for five years duty free. And that indulgence, by the 26 G. 3. c. 53. is continued to June 20, 1790, &c.

Also

Leather.

51

Also by the 27 G. 3. c. 13. a duty is laid upon all hides and skins tanned in *Great-Britain*, of what kind soever, (that is to say) for every pound weight of *calves* skins, *kids*, *hogs* skins, *dogs* skins, and *seal* skins, and *sheep* and *lamb* skins for gloves, and *bazil* -

Duty on leather dressed in Great Britain.

£. s. d.
0 0 1½

For every pound weight of *goat* skins which shall be tanned with *shumack*, or otherwise to resemble *Spanish* leather -

0 0 4.

For every pound of *sheep* skins to be tanned for roans (after the nature of *Spanish* leather)

0 0 2

For every 100l. of the real value of all other skins and pieces of hides and skins which shall be tanned, not before particularly charged

30 0 0

All which said duties shall be paid by the tanners.

For all hides of *horses* dressed in allum and salt, or meal, or otherwise tawed, for each hide

0 1 6

For all hides of *steers*, *cows*, or any other hides (*horses* excepted) which shall be so dressed, for each hide

0 3 0

For every pound weight of *calves* skins, *kips*, and *seal* skins, so dressed -

0 0 1½

For every dozen of *stink calf* skins so dressed with the hair on -

0 3 0

For every dozen of *stink calf* skins so dressed or tawed without hair, or *dogs* skins, or *kid* skins (except such as paid the full duty on importation) -

0 1 0

For every pound of *buck* and *doe* skins (except such as paid the full duty on importation) dressed as aforefaid -

0 0 6.

For every dozen of *goat* skins, or *beaver* skins dressed as aforefaid -

0 2 0

For every pound weight of *sheep* on *lamb* skins dressed as aforefaid -

0 0 1¼

For every 100l. of the real value of all skins or pieces of hides or skins which shall be tawed (not before particularly charged)

30 0 0

Which said duties shall be paid by the tawers or makers thereof into leather

But by the 28 G. 3. c. 37, the duties imposed by the 27 G. 3. c. 13. on hides and skins dressed in oil in *Great-Britain*, are, after the 5th of *July* 1788, repealed, and in lieu thereof shall be paid for every pound weight

Leather.

of buck, deer, or elk skins which shall be dressed in oil. £. s. d.
0 1 0

For every pound weight of sheep or lamb skins dressed in oil. 0 0 3

For every pound weight of all other skins dressed in oil. 0 0 6

And certain drawbacks are allowed on exportation. *f.* 1, 2, 3.

Which said duties shall be paid by the oil leather-dressers.

For every dozen of vellum made in Great-Britain. 0 3 5½

And for every dozen of parchment so made. 0 1 8½
Schedule (F.)

Small pieces charged ad valorem.

But by the 9 *Ann. c.* 11. *f.* 46, Such small pieces as are commonly called pates and tails, and are tanned after they are cut from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked, as is hereafter directed.

What is meant by hides tanned, dressed in oil, and tawed.

By tanned hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shumack; and by hides and skins dressed in oil, such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by tawed hides or skins, such as are dressed or made into leather in allum and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *Ann. c.* 11. *f.* 3.

Duty ad valorem how to be ascertained.

By the 9 *Ann. c.* 11. *f.* 14, The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser.

No leather to be twice charged.

Any hide or skin, having once paid the duty, shall not be charged under any other denomination. *Id. f.* 3.

Commissioners for these duties.

The commissioners of the treasury shall appoint commissioners of these duties, who shall have the same power as the commissioners of the excise. *Id. f.* 13, 38.

Places of working to be entered, on pain of 50*l.*

By the same statute, *f.* 15, All tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same, on pain of 50*l.*

And any person who shall not make such entry, or shall use

use any private tanyard, workhouse, pit, fat, mill, or place, shall forfeit 20/. and the goods found in such private tanyard, workhouse, or place not entered, or the value thereof, shall also be forfeited. 9 Ann. c. 11. s. 17.

The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum, or parchment; and they shall give two days notice in writing to the officer, before they shall take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall, in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice, or collector or supervisor; and they shall not remove any of the said goods from the place of drying until the duty be first charged, entered, and marked. *Same statute, s. 16.*

Notice of removing to the place of drying.

Persons who shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any of the said goods contrary to this act, shall respectively forfeit 20/; and such goods unlawfully removed, or the value thereof, shall also be forfeited. s. 17.

Penalty on not sending notice.

And any tanner or other such person who shall conceal any hide or skin, vellum, or parchment, or any part thereof, shall forfeit 20/. together with the goods concealed, or the value thereof. *Id.*

Concealing to avoid the duty.

And by the same statute, s. 17, The officers at all seasonable times, in the day-time, may enter into any tanyard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10/.

And all tanners, and other the said persons, shall keep sufficient just scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing-place. *Id. s. 18.*

Tanners to keep just scales and weights.

If he shall not keep just scales and weights, or shall not permit his hides to be weighed, or shall neglect or refuse to bring the scales, or to assist at the weighing, he shall forfeit 50/. *Id. s. 26.*

And if, by any trick, contrivance, or management, he shall contrive means to defraud the revenue; as in the following case:

At the sessions for the county of Hertford, held on Monday, January 14, 1788, an appeal was heard against a conviction of a tanner, for not keeping sufficient weights. — It appeared, that he had used a weight less than a pound.

Neglecting or refusing to produce a less weight than a pound.

appeared that the custom of the officers was, generally, in the weighing of large hides, to put two, three, or four skins together into the scale, and never to use a less weight than one pound, giving the turn of the scale to the tanner: that the appellant had insisted upon every skin being weighed separately, and, though requested, refused to produce a less weight than a pound. Upon the skins being weighed a second time, it appeared, that by the turn of the scale the tanner had got thirty-two pounds weight in his favour. The conviction was affirmed.

Penalty by 10 G. 3.

And by the 10 G. 3. c. 44, If he shall use false or insufficient scales or weights, he shall forfeit 100^l: but not to be prosecuted both on this and the former act.

Duty to be ascertained before removal.

And all tanners, and other the said persons, shall, before any the said goods be removed from the place of dressing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and he shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall also ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before such officer, or a justice. 9 Ann. c. 11. s. 19.

Charge by the officer.

And by the same statute, s. 20, After the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or to whom they shall appoint, leaving a true copy thereof under his hand, with such tanner or other person.

Leather, vellum, and parchment to be marked.

Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. *Id.* s. 21.

In what part to be marked.

And should such tanner or other person desire the mark to be made on any particular part of the hide, the officer shall mark it accordingly. s. 22.

Counterfeiting the stamp, felony.

And any person who shall counterfeit the stamp, or knowingly sell any of the said goods with a counterfeit stamp, shall be guilty of felony without benefit of clergy. *Same stat.* s. 44.

Removing such goods before marked.

If any tanner, or other such person, shall remove from his yard or drying-place any of the said goods, before the duties shall be charged, and before they are marked; or if any buyer shall carry them away before they are marked, he shall forfeit

forfeit 50/. and the goods so unlawfully sold or removed, shall also be forfeited. *Id.* *f.* 26.

And to prevent frauds between the officers and tradesmen, it is enacted by 5 G. c. 2. *f.* 10, That all tanners, weavers, and dressers of hides, skins, vellum, and parchment, shall keep those which have not been stamped, from those which have; and those which have been last stamped, from those which have been stamped before, for twenty-four hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor; on pain of 10/.

Leather stamped and unstamped to be kept sep rate.

And by the 5 G. 3. c. 43, They shall not remove the same for twenty-four hours from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, that so they may have an opportunity to re-weigh the same after the inferior officers; and if any additional weight shall be found, the said hides, and pieces thereof, shall be charged accordingly. And any such tanner, tawer, or dresser, who shall remove, or cause or suffer the same to be removed contrary hereunto, shall forfeit 20/.

And they shall not be removed till after twenty-four hours.

f. 21.

And he shall keep scales and weights for such re-weighing, and bring the hides and pieces thereof to the scales, and assist the surveyor and supervisor in re-weighing, and in examining from time to time the depending stock of such tanner, tawer, or dresser; on pain of 50/. *f.* 22.

To keep scales and weights for re-weighing.

By the 9 Ann. c. 11. *f.* 23, Persons residing within the bills of mortality shall pay off the duties in fourteen days to the commissioners, and elsewhere in six weeks, to the collectors, after the said goods shall be marked.

Duties when to be paid.

But, for payment of the said duties, no person shall be obliged to go further than the next market town. *Id.* *f.* 24.

And those persons who shall not pay, as aforesaid, shall forfeit double duty; and shall not deliver out any of the said goods till the duty be paid, on pain of double value. *f.* 25.

Penalty on neglecting payment.

Every tanner, and other such person, shall once in three months (if it shall be demanded) make an account with the officer, of the goods taken out of the wooze, or other ingredients, and of his entries thereof, and balance such account by the goods which have been charged, and those in his possession unmarked and uncharged; on pain of 50/. *f.* 27.

Balancing accounts with the officer.

Any two justices of the peace residing near, are authorised to hear and determine offences; and they shall, on information or complaint, in three months after seizure made, or offence committed, summon the party accused, and the witnesses; and, on appearance or contempt of the party,

Penalties how recovered.

(proof of notice being given) shall examine witnesses on oath, give judgment, and issue warrants for levying the pecuniary penalties by distress and sale, if not redeemed in six days. *Same stat. f. 36.*

How mitigated. And the said two justices may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation, provided that such mitigation shall not reduce the penalties to one fourth part, over and above the charges. *f. 37.*

Appeal.

Any person who shall think himself aggrieved, may appeal to the next sessions, who may determine the matter, and issue warrants for levying the penalties. *f. 36.*

And by the same statute *f. 47.* No *certiorari* shall be allowed.

II. Of Hides in their raw State.

Only tanners shall buy rough hides.

By the 1 *Jac. c. 22. f. 7,* None but tanners shall buy any rough hide or skin (except salt hides for the use of ships), on pain of forfeiting the same, or the value thereof.

Concerning the *gashing* and *watering* of hides, and the penalty for selling *putrified hides*, see title BUTCHER.

III. Of the tanning of Hides.

Who may carry on the trade of a tanner.

By the 1 *Jac. c. 22. f. 5,* No person shall be a tanner who has not served seven years, except the wife or such son of a tanner as has used the trade for four years, or the son and daughter of a tanner, or such person who shall marry such wife or daughter to whom he shall leave a tan-house and fats; on pain of forfeiting all such leather by him tanned, or of which he shall receive any profits, or the value thereof.

Tanner shall not work up his leather.

And by the same statute, *f. 6,* No tanner shall be of any craft exercised in the cutting or working of leather; on pain of forfeiting the same, or the value thereof.

Nor be a butcher.

Nor shall he be a butcher; on pain of 6s. 8d. a day. *Same stat. f. 4.*

Restrictions concerning the manner of tanning.

No tanner shall suffer any hides to lie in the limes till they are over-limed; nor shall he put them into any tan-fats, before the lime shall be perfectly soaked and washed out of them; nor shall he use in the tanning thereof any thing but ash-bark, oak-bark, tap-wort, malt, meal, lime, culver dung, or hen-dung; nor shall he suffer it to lie wet till it be frozen; nor dry it by the fire, or summer sun; nor tan any hide putrified or rotten; nor suffer the hides for utter sole-leather to lie in the woozes less than twelve months; nor the

the hides for upper-leathers less than nine months ; nor shall he negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite ; nor shall he put to sale any leather tanned otherwise than by this statute is limited ; on pain of forfeiting every hide tanned and offered to sale contrary to this act, or the value thereof. *Same stat. f. 11.*

Nor shall any person fell any oak-trees meet to be barked, where bark is worth 2s. a cart-load, over and above the charges of barking and pilling, except timber for houses, ships, or mills, between April 1 and June 30 ; on pain of forfeiting the same, or double value thereof. *f. 20.*

No purveyor of timber shall fell for the king's use, any oak timber-tree meet to be barked, but in barking time (except for the king's houses or ships) ; or receive any profit by any lops, tops, or bark of trees to be taken by them ; or take or dispose from the owner any more of any tree so to be taken, than only the timber thereof, to be used only about the king's buildings or ships ; on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree, 40s. And the owner may withhold any bark, lop, or top, any commission or other matter notwithstanding. *f. 21.*

No tanner shall raise with any mixtures, any hide to be converted to back, bend-leather, clouting-leather, or any other sole-leather, except they are for largeness, state, and growth fit for that purpose, to be tried by the triers hereafter mentioned, on pain of forfeiting the same. *f. 12, 13.*

Any tanner who shall offer to sale any leather not thoroughly tanned or dried, to the satisfaction of the triers ; shall forfeit so much as shall be so deficient, whether whole hides or part thereof. *f. 15.*

No person shall set the fats in tan-hills, or other places where the woozes or leather may take any unkind heats ; or put any leather into any hot or warm woozes ; or tan any hide with any hot or warm woozes ; on pain of 10s. and the pillory on three market-days in the next market-town. *f. 16, 17.*

By the 9 *Ann. c. 11. f. 12.* Any tanner or other person who shall shave, or cause to be shaved any hide or calf-skin, before it be thoroughly tanned, whereby it shall be impaired, shall forfeit the same, or the value ; half to the king, and half to him who shall sue.

And by the 13 & 14 *C. 2, c. 7. f. 8.* Every tanner who shall shave, cut, and rake the upper-leather hides, or the necks of their backs and butts, shall forfeit the same, or the value thereof, and the searchers and sealers may seize them.

IV. Of

IV. Of currying Hides.

Who may not
be a currier.

By the 1 Jac. c. 22. f. 25, No currier shall be a tanner, shoe-maker, butcher, or other artificer using cutting of leather; on pain of forfeiting 6s. 8d. for every hide he shall curry while he shall occupy any of the said mysteries.

Restrictions
concerning
currying hides.

And by the same statute, f. 22, No person shall curry any leather in the house of any shoe-maker or other person, but only in his own house, situate in a corporate or market-town; nor shall curry any leather except it be perfectly tanned; nor shall curry any hide being not thoroughly dried after his wet season; in which wet season he shall not use any stale urine, or any other deceitful or subtle mixture or means to hurt the same; nor curry any leather meet for utter-sole leather, with any other stuff than hard tallow, nor with any less of that than the leather will receive; nor curry any leather meet for over-leather, and inner-soles, but with sufficient stuff, being fresh and not salt, and thoroughly liquored till it can receive no more; nor burn or scald any hide or leather in the currying; nor shave any leather too thin, nor gash or hurt any leather in the shaving, or by any other means; but shall work the same sufficiently in all points; on pain of forfeiting for every such offence (other than in gashing or hurting in shaving) 6s. 8d. and the hide of such skin or hide marred by his evil workmanwip; and for every offence in gashing or hurting by shaving, double so much to the party grieved as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved shall be.

Leather deliver-
ed to the cur-
rier.

By the 13 & 14 C. 2. c. 7. f. 13, Every artificer dealing in cutting of leather, or other person who shall buy any red tanned leather, within London or three miles thereof, shall, before the next market-day for sale of leather, give notice thereof to one of the curriers' company, and in three weeks after shall deliver the leather so bought (except what shall be used for soles, without being curried, tallowed, or dressed) to the said currier, to be curried, tallowed, or dressed, on pain of 6s. 8d. for every back, butt, hide, or calf-skin.

Time allowed
for currying it.

And by the 1 Jac. c. 22. f. 26, No currier shall refuse to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him sufficient stuff for the perfect liquoring thereof, with as convenient speed as may be, not exceeding eight days in summer, and sixteen in winter,

winter, in the presence of the said artificer, if he will be present, otherwise in his absence; on pain of forfeiting to the party grieved, for every hide or piece of leather not in this manner curried, and well and speedily dressed, 10s.

Also by the 12 G. 2. c. 25, Any currier who shall refuse to curry any leather, brought or sent to him by any person dealing or working in leather, or shall neglect to curry such leather in 16 days between *September 28* and *March 25*, and in eight days in the remaining part of the year, shall, on conviction before one justice, on the oath of one witness, forfeit any sum not exceeding 5*l.* by distress; half to the informer, and half to the poor.

Time more precisely limited, by 12 G. 2.

V. Triers of Leather.

By the 1 Jac. c. 22, it is enacted, That the mayor of *London* (on pain of 5*l.* half to the king, and half to him who shall sue) shall, within six days after notice to him given of the seizure of any leather, red and unwrought, appoint six triers, two of whom shall be of the cordwainers' company, two of the curriers', and two of the tanners', using *Leadenhall* market; who, upon their oaths to be taken before him, shall on the second or third market-day for leather (to be held on *Tuesday*, 13 & 14 C. 2. c. 7. s. 9.) in the afternoon, try whether such leather be sufficient or not. s. 33, 35.

Triers in London, how appointed.

And by the same statute, s. 34, Every other mayor, or lord of liberty, out of the compass of three miles from *London*, in whose precincts any seizure shall be of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall, on like pain, with all convenient speed, after having notice of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; such trial to be openly on some market-day, and within fifteen days at the farthest from the time of the seizure, upon the oaths of the said triers.

And if the triers shall neglect their duty, they shall forfeit 5*l.* s. 33.

Triers neglecting their duty.

VI. Duty of the Searchers and Sealers of Leather.

By the same statute of 1 Jac. c. 22. s. 36, The mayor and aldermen of *London* (on pain of 40*l.* for every default, half to the king, and half to him who shall sue) shall yearly appoint eight freemen of some of the companies of cordwainers,

Searchers and sealers appointed in London.

wainers, curriers, sadlers, or girdlers (one of whom shall be a sealer, and keep a seal for the sealing of leather) who shall be sworn before them to do their office truly: and they shall search and view all tanned leather which shall be brought to market, whether it be thoroughly tanned and dried; and if it is, they shall seal such leather.

Four to be removed annually.

And four of such sealers shall be removed at the end of one year, when four new ones shall be chosen; and no one shall continue in the office more than two years together, nor be employed again till after the end of three years; on pain of 10*l.* a month. *Same Stat. f. 36.*

Searchers in other places.

And by the same statute, *f. 32*, All mayors and lords of liberties, fairs, and markets, out of the compass of three miles from *London*, shall, (on pain of 40*l.*) yearly appoint and swear two, three, or more honest and skilful men, to be searchers within their precincts; who shall search as often as they shall think fit, or need shall be, and seal what they find sufficient: and if they find any leather offered to be sold or sealed, insufficiently tanned or curried, or any boots, shoes, bridles, or other things made of tanned or curried leather, insufficiently tanned, curried, or wrought, they may seize and keep them till they are tried by the triers.

Fee for sealing.

The wardens of the company of curriers shall search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal, to be prepared for that purpose, with convenient speed, not exceeding one day after the currying and request made, seal such as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calf-skins one penny, to be paid by the currier; on pain of 6*s.* 8*d.* for every hide not searched and sealed. *f. 27.*

But by the 1 *W. sess. 1. c. 33. f. 4*, They shall not visit, search, or seize any leather, hide, or skin, but what shall be curried or dressed in *London*, or within three miles of it, by some member of their own company; nor in any other place but in the open market, or in the shops, houses, or warehouses of such currier.

Hindering the searchers.

Any person who shall deny, or not suffer the searching or seizure of insufficient wares, shall forfeit 5*l.* *f. 40.*

Searcher and sealer misbehaving.

And if any searcher or sealer should refuse, with convenient speed, to seal any leather which shall be sufficient, or shall allow that which is insufficient, he shall forfeit 40*s.* If he shall receive any bribe, or exact any other fee than this act appoints, he shall forfeit 20*l.* And if he shall refuse to execute his office, he shall forfeit 10*l.*

VII. Of buying and selling Leather.

By the 1 Jac. c. 22. s. 8, No person shall buy any tanned leather unwrought, but who shall work the same into wares; on pain of forfeiting such leather, or the value thereof. Buying leather and selling it again unwrought.

No person shall put to sale any tanned leather red and unwrought, but in open fair or market, unless such leather has been first searched and sealed; nor offer to sale any tanned leather red and unwrought before it shall be searched and sealed; on pain of forfeiting the same, or the value thereof; and also for every hide or piece 6s. 8d. and for every dozen calves' skins 3s. 4d. s. 14. Selling unsealed.

But no person shall incur any penalty for selling or buying any sheep skins unsearched or unsealed. 4 Jac. c. 6. s. 2. Sheep skins may be sold unsearched,

By the 12 G. 2. c. 25, it is enacted, That all persons who deal or work in leather, may buy all sorts of tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed; and may cut and sell the same in any small pieces in their open shops.

Also by the 1 W. sess. 1. c. 33. s. 5, All dealers or workers in leather may buy all sorts of red tanned leather in open fair or market, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into any other made ware.

And by the 1 Jac. c. 22. s. 45, In London, or within three miles of it, no person shall sell any wares appertaining to the mystery of any artificer cutting leather, except in open shop, common fair, or market, whereby the wardens may have search thereof; on pain of forfeiting the same and 10s. Where it may be sold in London.

By the 13 & 14 C. 2. c. 7, All red tanned leather shall be bought only in the open fair or market, and not in any house, yard, shop, or other place; on pain of forfeiting such leather, or the value thereof, and the contract to be void. And all such leather shall be searched and sealed before sale, and on sale shall be registered, and an entry made both by the buyer and seller, both being present, and their names and dwellings entered in the book of the register; on pain that every buyer or seller making default, shall forfeit the same or the value thereof. s. 4. Where to be sold and registered.

And by the 1 Jac. c. 22. s. 41, Searchers and sealers shall keep a register, in which they shall enter all bargains made for leather, hides, or skins, during the fair or market, being thereunto required by the buyer or seller, with the prices; taking of the seller, for searching, sealing, and registering, of every Fee for registering.

every ten hides, backs, or butts, 2*d*. and so after the same rate; and for every six dozen of calves' skins, or sheep' skins 2*d*; and of the buyer after the same rate.

Registering in
London.

By the same statute, *f*. 38, All red tanned leather, which shall be brought into *London*, or within three miles thereof, shall be brought to *Leadenhall* before it be housed, and there viewed whether it has been searched or sealed, and shall be registered by the searchers, with half such fees to be paid for such of the said tanned leather as shall be bought out of *London*, or within three miles compass of the same, and searched and sealed before it be brought within the city; on pain that every person housing or not bringing his leather to *Leadenhall*, shall forfeit for every hide or skin 6*s*. 8*d*.

VIII. Of manufacturing or exporting Leather.

Shoemakers'
duty.

The same statute of 1 *Jac. c.* 22. *f*. 28, enacts, That no shoemakers shall make any boots, or shoes, or any part of them, of *English* leather wet curried (other than deer skins, calves' skins, or goat skins made and dressed like *Spanish* leather) but of leather well and truly tanned and curried in manner aforesaid, or of leather well and truly tanned only, and well sewed, without mixing over-leathers; that is to say, part being neats leather, and part calves leather; nor shall put into any part of any shoes or boots, any leather made of a sheep skin, bull hide, or horse hide; nor in the upper leather of any shoes, or into the nether part of any boots (the inner part of the shoe only excepted), any part of any hide from which the sole-leather is cut, called the wombs, necks, shanks, flank, powle, or cheek; nor shall put into the utter-sole any other leather, than the best of the ox or steer hide; nor into the inner-sole, any other leather than the wombs, neck, powle, or cheek; nor into the trefswells of the double soled shoes, other than the flanks of any of the hides aforesaid; nor shall make or put to sale, between *September* 30, and *April* 20, any shoes or boots meet for any person above four years old, wherein shall be any dry *English* leather, other than calves skins or goat skins made or dressed like *Spanish* leather; on pain of forfeiting for every pair of shoes or boots 3*s*. 4*d*. and the value thereof.

Shoemakers in
London,

And if any shoemaker or cobbler, within *London* or three miles thereof, shall put any tanned leather, which shall not be well and perfectly tanned, or put any curried leather into boots or shoes, or other things made of leather not sufficiently

ciently tanned and curried, and also sealed; he shall forfeit the same, and the value thereof. *f. 44.*

And any shoemaker, fadler, or other artificer using leather, who shall make any wares of any tanned leather insufficiently tanned, or of tanned and curried leather being not sufficiently tanned and curried, shall forfeit the same and the value thereof. *f. 44.*

Working bad leather.

And the master and wardens of the mysteries of cordwainers, curriers, girdlers, and fadlers of *London* (on pain of 40% for every year they make default, half to the king and half to him who shall sue) shall once a quarter or oftener make search and view of all boots and shoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may seize and carry them to the several common halls. *1 Jac. c. 22. f. 29.*

Searching in *London* for insufficient wares.

And by the *1 W. 1. c. 33. f. 3*, it is enacted, That every hide, skin, or piece of tanned leather shaved or liquor-ed, of what colour soever, with any lawful liquor or dressing, and being well and truly curried, shall be deemed ware, within the statute of the *1 Jac. c. 22.*

What shall be deemed ware within the statute.

By the *20 C. 2. c. 5.* and *9 Ann. c. 6. f. 4*, All sorts of leather and skins, tanned or dressed, may be exported.

IX. Importation of Leather Gloves or Mitts.

To encourage the importation of foreign kid and lamb skins unmanufactured, the following act of *6 G. 3. c. 19*, was promulgated.

It is therein enacted, That if any foreign manufactured leather gloves or mitts shall be imported, they shall be forfeited, and may be searched for and seized by any officer of the customs or excise; and every person who shall import the same, or be aiding therein; or, being a vender or retailer of leather gloves or mitts, in whose possession any such foreign manufactured leather gloves or mitts shall be found; or who shall sell or expose the same to sale; or conceal them with intent to prevent the forfeiture; shall, over and above the forfeiture of the said goods, and all interest he may have therein, forfeit also 200% with double costs. *f. 1.*

Penalty on importing leather gloves or mitts.

Should the seizure of foreign manufactured gloves or mitts be out of the bills of mortality, and the value thereof not exceed 20%; two justices may determine such cause of seizure of the said goods. *f. 2.*

Two justices may determine not exceeding 20%.

And after condemnation, such goods shall be publicly sold to the best advantage, by the candle, for exportation; and

To be sold only for exportation.

not

not delivered out till security be given that they shall be exported, and not landed in any part of his majesty's dominions: half the produce of such sale shall go to the king, and half to the officer who shall seize and secure such goods.

Proof to lie on the person in whose possession the goods were found.

f. 3.

Should any doubt arise where the same were manufactured, the proof shall not lie on the prosecutor, but on the person in whose possession they shall be found; and if no proof be given that they were manufactured in *Great-Britain*, they shall be taken to have been manufactured out of *Great-Britain*. f. 4.

But if any person, in whose possession such goods shall be found (such person not importing or concealing the same) shall discover upon oath, before one justice, the person who sold them to him, so as such vender may be convicted; he shall be indemnified. f. 5.

Forfeitures how recovered and distributed.

The pecuniary forfeitures given by this act to be sued for in the courts at *Westminster*; half to the king, and half to the officer who shall inform and sue. f. 6.

Who shall sue.

But if the officers of the customs or excise shall neglect or refuse, for one calendar month after condemnation, to prosecute for the pecuniary penalty, any other person may sue for it, and it shall be distributed as aforesaid. f. 7.

Not to extend to wearers.

Nothing herein shall extend to subject any wearer of such gloves or mitts, as part of his dress only, to any forfeiture or pecuniary penalty.

X. General Penalties and Forfeitures.

Forfeitures by 1 Jac. how recovered and distributed.

All forfeitures by the 1 Jac. c. 22, which are not therein otherwise specially directed, shall be one third to the king, one third to him who shall sue, and one third to the city, town, or lord of the liberty. And such forfeitures may be sued for in any court of record, by action of debt, bill, plaint, or information, or otherwise. 1 Jac. c. 22. f. 46.

Also all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their sessions, leet, or law-day, and hear and determine the same.

The produce of condemned leather, &c, how distributed.

All leather, shoes, or other things, made of tanned or curried leather, seized and condemned by the triers, by the said statute of 1 Jac. c. 22, if in *London*, shall be brought to Guildhall, and prized by indifferent persons, and the value thereof divided; one third to the seizer, one third to the chamber of *London*, and one third to such poor as the mayor and four aldermen shall appoint. If in any other city, town,

town, they shall be brought to the common hall of such town, or to some convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforesaid, and the value divided; one third to the poor, and in other deeds of charity, at the discretion of the mayor or lord of the liberty; one third to the mayor for the use of the commonalty, or to the lord of the liberty, where there is no mayor or other such like officer; and one third to the seizer.

And by the 9 *Ann. c. 11*, Any two justices near where the forfeitures on the act of the 9 *Ann.* shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 *Jac. c. 22*, may hear and determine the same; who shall, on information or complaint, in three months after any seizure made or offence committed, summon the party accused and the witnesses; and on appearance, or contempt in not appearing (proof of notice being given) shall proceed to examine witnesses on oath, and give judgment, and issue warrants for levying penalties, and cause the distress to be sold, if not redeemed in six days. And if either party should not be satisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and, in case of conviction, issue warrants for levying the penalties. *f. 36.*

By the 9 *Ann.*
two justices
may hear and
determine.

All forfeitures and sums by the act of the 13 & 14 *C. 2. c. 7.* shall be recovered in any court at *Westminster*, or in any court of record in the city, town, county, or place where the offence shall be committed; half to the king, and half to the informer. *f. 10.*

Forfeitures on
the 13 & 14 *C.*
2. c. 7.

N. B. By the 30 *G. 3. c. 18*, the act of the 12 *G. 3. c. 50*, To encourage the manufacture of leather, by lowering the duty payable on the importation of oak-bark (which was to continue in force for five years, and has from time been continued) is further continued for five years, and from thence to the end of the then next session of parliament.

Lecturer.

IN *London* and other cities, there are lecturers appointed as assistants to the rectors of churches. They are generally chosen by the vestry or chief inhabitants, and are usually the afternoon preachers.

There is also one or more lecturers in most cathedral churches, and many lectureships have also been founded by the donations of private persons, as lady *Moyer's* at *St. Paul's*, and many others; and it seems generally, that the bishop's power is only to judge with respect to the qualification and fitness of the person, and not as to the right of the lectureship: as in the case of the churchwardens of *St. Bartholomew's*, *M. 12 W. one Fishburne* leit 251. a year for the maintenance of a weekly lecturer, and appointed that the lecturer should be chosen by the parishioners, and preach on any day in every week as they should like best. The parishioners fixed on *Thursday*, and chose a lecturer every year; and now *Mr. Turton* being lecturer, and the parish having chosen *Mr. Rainer*, the other would not submit to the choice; whereupon the churchwardens shut *Mr. Turton* out of the church. Afterwards the bishop of *London* determined in his favour, and granted an inhibition and monition for that purpose. But by *Holt*, chief-justice, a prohibition must go to try the right: it is true, a man cannot be a lecturer without a licence from the bishop or archbishop; but their power is only as to the qualification and fitness of the person, and not as to the right of the lectureship; and the ecclesiastical court may punish the churchwardens, if they will not open the church to the parson, or to any one acting under him, but not if they refuse to open it to any other. 3 *Salk.* 87. 1 *B. Ecc. L.* 659, 660.

But where there is no fixed lecturer, or ancient salary, but the lectureship is to be supported only by voluntary contributions, and there is not any custom concerning such election; it seems that the ordinary is the proper judge, whether any lecturer in such place ought to be admitted or not; as in the case of the lecturer of *St Ann's, Westminster*, *T. 16 Geo. 2.* the court of King's Bench, upon consideration, refused to grant a *mandamus* to the bishop of *London* to grant licence to a lecturer, who appeared to have no fixed salary, but to depend altogether upon voluntary contributions, and where there was no custom; and the rector had refused his leave to preach in the church to the person now applying. *Str.* 1192.

By the 13 & 14 *C. 2. c. 4.* Lecturers in churches unlicensed by the archbishop of the province, or bishop of the diocese, and not conforming to the liturgy, shall be disabled, and shall also suffer three months imprisonment in the common gaol; and two justices, (or the mayor in a town corporate) shall, upon certificate from the ordinary, commit them accordingly. *f.* 19. 23.

Leet.

LEET, from the Saxon *leth*, *lathe*, *lathe*, seems to imply what is meant the court of the *lathe*, as the county-court is the court by leet.

of the county; the counties in ancient times, being subdivided into lathes, rapes, wapentakes, hundreds, or the like; and the sheriff twice a year performed his torn or perambulation, for the execution of justice throughout the county. This power of holding courts was afterwards granted to several great men within certain districts. Hence these courts, holden within particular parts of the county, have descended to us without variation, and the name of the *leet*, *leth* or *lath* courts.

Leet, says *Lambard*, was a court of jurisdiction above the wapentake, or hundred. *Lambard*, n. 34.

The court-leet is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's torn has in the county. 2 *Haw.* 72.

For the ease of the people, the leet, or view of frankpledge, was by the king, divided and derived from the torn, who granted the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn done unto them, at their own doors, without any charge or loss of time. 2 *Inst.* 71.

The ancient custom of freemen of *England*, for the preservation of the public peace, was, that every free-born man at the age of twelve years, (except peers, clergymen, and tenants in ancient demesne) should in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his people, or to be kept in prison: whereupon a certain number of neighbours usually became bound for each other, to see each man of their pledge forthcoming at all times, or to answer the transgression committed by any gone away. Therefore when any one offended, it was forthwith enquired in what pledge he was, and then those of that pledge brought him forth within thirty-one days to his answer, or satisfied for his offence. This was called frankpledge, and the circuit thereof *decenna*, because it usually consisted of ten households; and every particular person, thus mutually bound for himself and his neighbours, was called *decennier*, because he was of one *decenna* or another.

And by the due execution of this law, says lord *Coke*, such peace was universally holden within this realm, that no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; insomuch that a man with a white wand, before the conquest, might safely have ridden with much money about him, without any weapon, throughout *England.* 2 *Inst.* 73.

No person is obliged to appear at any leet, within the precincts whereof he does not reside. 2 *Haw.* 57.

Leet when to be holden.

He who claims a leet by charter, must hold it on the days prescribed by the charter; he who claims it by prescription, may claim to hold it once or twice in every year, at any such days as shall upon reasonable warning be appointed, if the usage has been so that it has been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription has been certainly used. 2 *Inst.* 72.

Offences within the leet, not inquirable in the torn.

If a nuisance done within the jurisdiction of the leet be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to enquire thereof. 4 *Inst.* 261.

What felonies are cognizable in the leet.

The leet has power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unless specially limited thereo. 2 *H. H.* 71.

But cannot hear and determine thereon.

But though the leet may receive indictments for felony, it cannot hear and determine them, but must send them to the gaol-delivery, there to be heard and determined, if the offenders are in custody, or remove them by *certiorari* into the King's Bench, that process may be made upon them to outlawry 1 *H. H.* 71.

Other public offences.

The leet has cognizance of a great many offences, both by the common law and by statute; as for instance, tippling in alehouses, assaults whereby bloodshed ensues, common barrators, bawdyhouses, defects in bridges and highways, destroyers of ancient boundaries, bakers, brewers, butchers, curriers, deciners or suitors not appearing in the leet, estrays, waifs, and treasure-trove, eaves-droppers, forestallers, regrators, ingrossers, destroyers of game, gamesters, hedge-breakers, neglecters of hue and cry, higlers, innholders, millers, night-walkers, common nuisances, want of pillory and stocks, and common pounds, rescous, scolds, shoemakers, searchers of leather, stoned horses of two years old put on the common, victuallers, constables neglecting watch and ward, weights and mea-

measures, and many others by particular statutes. *Wood. b.*

4. c. 1.

A court-leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace, who shall make an affray in his presence while the court is sitting, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him; in which case he may afterwards impose a fine according to his discretion. *2 Haw. 4.*

Steward of the leet may bind to the peace.

But a man cannot be presented in the leet for surcharging the common, or digging in the common; because this concerns the private, not the public interest, and belongs rather to the court-baron to enquire of it. *Wood. b. 4. c. 1.*

Private offences not cognizable.

Nor is any offence cognizable in the leet, unless it arose since the holding of the last court. *2 Haw. 66.*

When offences are cognizable.

Constables, of common right, are to be chosen and sworn in the leet or torn. *2 Haw. 62.*

Constable chosen in the leet.

It appears that any person whatsoever is capable of being put upon the jury in a court-leet. *2 Haw. 69.* See title JURORS.

Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward, to prevent embezzling. *2 Haw. 69.*

Indictments to be indented.

It seems agreed, that a presentment in the leet of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a fine or amerciamment without any further proceeding, and admits of no traverse to the truth of it: but if it touch the party's freehold, it may be removed into the King's Bench, and there traversed. *1 Haw. 217, 219. 2 Haw. 71.*

Traverse,

A fine is a pecuniary punishment, assessed by the steward, for an offence or contempt committed in court, or by public officers out of court, in administration of their offices: it is always assessed by the steward, and is not to be assessed, though sometimes it is called an amerciamment; and the lord, by a special warrant to the bailiff, may distrain, or have an action of debt, for a fine imposed; but he cannot imprison. This is the only court which has power to fine, and yet cannot imprison. *Wood. b. 4. c. 1. 2 H. H. 61.*

Fine assessed by the steward.

An amerciamment is also a pecuniary punishment, assessed by the homage or jury, for offences committed out of court by private persons, to be mitigated by assessors, who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also the lord may have an action of debt, or may distrain of common

Amerciamment assessed by the jury.

right, and impound his distress, or sell it at his pleasure, but cannot imprison for it. *Wood. b. 4. c. 1.*

Affeerers, in the preceding article, is a term derived from the French *affeurer*, to tax.

Amerciament
how recovered.

On presentment of a nuisance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum : or order him to remove it, under such a penalty, without amercing him : and on presentment at another court, that he has not removed such nuisance (having had notice thereof), the penalty may be recovered by distress or action of debt, without farther proceeding. 2 *Haw* 61.

By-laws.

Any court-leet, with the assent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like : and a court-baron by custom may make by-laws, for the regulating of commons, and such like private matters. And therefore where a court-leet and baron are holden together, as they usually are, it seems that what is transacted therein, in relation to public matters, shall be applied to the jurisdiction of the court-leet, and what is done in relation to private matters, shall be intended to be done by the court-baron. 2 *Haw*. 68.

Business of the
leet declined,

But the business of the leet has long declined, and is devolved on the quarter-sessions. 3 *Burn*. 96.

Pillory and
stocks to be pro-
vided.

The lord of the leet is to provide a pillory and tumbrel : and for want thereof, he may be fined, or his liberty seized. *Cro. El.* 698.

The stocks are to be provided at the charge of the town ; for originally they were not intended to punish, but merely to keep men in hold. *Wood. b. 4. c. 1.*

Letter.

Opening or de-
taining a letter.

BY the 9 *Ann. c. 10. s. 40*, A penalty of 20*l.* is inflicted on any person belonging to the post-office, who shall open or detain any letter in its process to delivery.

Secreting a let-
ter with a bank-
note a capital-
offence.

A servant of the post-office is within the penalty of 5 *G. 3. c. 25. s. 17*, which makes it a capital felony to secrete a letter containing any bank-note, though he has not taken the oath required by 9 *Ann. c. 10. s. 17, 41*.

But not if such
letter contains
cash only.

But to secrete a letter containing money, is not an offence within the statutes concerning the servants of the post-office ; as in the following case : At the Old Bailey July sessions 1774, *Timothy Skutt*, was tried before Mr. justice *Nares*, present

present Mr. justice *Willes*, and Mr. serjeant *Glynn*, recorder, on 5 G. 3. c. 25, and 7 G. 3. c. 50, for that being a person employed in the general post-office, he did steal and take away a certain letter, directed to the widow *Ball*, at *Long-bridge* in *Wiltshire*, and another letter directed to Mrs. *Wood* at *Harwarders* in *Flintshire*. The prisoner was, at the time the fact was committed, a sorter of letters in the post-office, and, being suspected, he was searched; when the two letters mentioned in the indictment were found upon him. They were traced to have come into his possession as a sorter of letters; but neither of them contained any security relating to the payment of money. It was proved, however, by the writer of them, that, when they were sealed up, and put into the receiving-house, each of them contained a five-and-three pence in gold coin; and the letters were traced through the hands of different offices, till they came to the possession of the prisoner. The prisoner's counsel submitted to the court that this case was not within the acts of 5 G. 3. c. 25. s. 17, and 7 G. 3. c. 50, which enacts, "That if any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever, employed in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the post-office, shall secrete, embezzle, or destroy any letter, or packet or bag of letters which he shall be intrusted with, or which shall have come to his possession, containing any bank-note, bank post-bill, bill of exchange, exchequer-bill, South-Sea or East India bond, &c. or shall steal or take the same out of any letter or packet that shall come to his possession, he shall suffer death without the benefit of clergy." The court were of the same opinion, and the prisoner was accordingly acquitted on this indictment; but he was detained, indicted, tried, and convicted of the simple grand larceny at common law, in stealing the five-and-three-pence; and was transported. *Leach's Cas. in Cr. Law*, 110.

The 9 G. c. 22, enacts, That if any person or persons shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name or names, demanding money, venison, or other valuable thing, such offender shall suffer death without benefit of clergy. Sending a letter demanding money.

The 27 G. 2. c. 15, enacts, That if any person or persons shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of his majesty's subjects, or to burn their out-houses, barns, stacks of corn Sending threatening letter to murder, &c.

or grain, hay or straw, though no money, or venison, or other valuable thing shall be thereby demanded; every such offender shall suffer death without benefit of clergy.

Sending letters containing threats of accusing persons of crimes, in order to extort money.

And the 30 G. 2. c. 24, enacts, That all persons who shall knowingly *send or deliver* any letter or writing, with or without a name or names subscribed thereunto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or other *infamous* punishment, with a view or intent to extort or gain money, goods, wares or merchandizes, from the person or persons so threatened to be accused, shall be deemed offenders against law and the public peace; and the court before whom they shall be convicted, may order such offenders to be fined and imprisoned, or put in the pillory, or publicly whipped, or to be transported according to the laws made for transportation of felons.

The bare delivery of a threatening letter, though sealed, is evidence of the knowledge of it.

At the Old Bailey, in *February* session 1776, *Archibald Girdwood* was indicted, on 27 G. 2. c. 15, and tried by a jury of the county of *Middlesex*, for feloniously sending a certain letter in writing, with the fictitious letters of *J. W.* thereto inscribed and signed, to one *John Edridge*, of *David-Street, Berkley-Square*, threatening to kill and murder him the said *John*. The contents of the letter were as follows:

"Sir,

"*February 9, 1776.*

"I am sorry to find a gentleman like you would be guilty of taking *Mac Allester's* life away for the sake of two or three guineas; but it will not be forgot by one who is but just come home to revenge his cause. This you may depend upon, whenever I meet you, I will lay my life for him in this cause. I follow the road, though I have been out of *London*; but, on receiving a letter from *Mac Allester* before he died, for to seek revenge, I am come to town. I remain a true friend to *Mac Allester*."

"*J. W.*"

It appeared in evidence that the prisoner had delivered this letter sealed up, to one *Elizabeth Robinson*, at the gate of *Newgate*; that she immediately carried it to a penny-post office in *Newgate-Street*, from whence it went regularly, as was directed, to the prosecutor in *David-Street, Berkley-Square*; but there was no proof that it was the prisoner's hand-writing, or that he was acquainted with its contents. Mr. baron *Hotham* left it to the jury, *First*, Whether, from the fact of the prisoner's having delivered the letter to *Elizabeth*

Elizabeth Robinson, they believed that he knew the contents of it? Secondly, Whether they thought the terms of the letter conveyed an actual threatening to kill or murder? The jury found the prisoner guilty; but the judgment was respited, and the following points submitted to the consideration of the twelve judges. First, Whether there was sufficient evidence to be left to the jury of the prisoner's sending the letter, knowing the contents? Secondly, Whether there was sufficient evidence of its purporting to be a letter threatening to kill or murder? Thirdly, Whether the prisoner was properly tried by a *Middlesex* jury, the letter having been delivered by the prisoner in *London*, and put into a post-office in *London* by another person, from whence the prosecutor received it in *Middlesex*? On the first day of the ensuing *Easter* term, the judges, being assembled in *Serjeant's-Inn* hall, were unanimously of opinion, that the conviction was right upon all the points submitted to their consideration. They thought, however, that the construction which the jury had given to the letter was rather strained; but, as that was a matter which they had under their consideration, and it had so appeared to them, the judges would not interpose. The prisoner was executed. *Leach's Cas. in Cr. Law.* 143.

But it has been adjudged that delivering a threatening letter is not sending it, within the meaning of 9 G. c. 22. and 27 G. 2. c. 15; as in the following case:

At the Old Bailey in *May* session 1787, *John Hammond* and *Mary Hammond* were indicted before Mr. Justice *Ashurst*, present Mr. baron *Perry*, on the statutes 9 G. c. 22, and 27 G. 2. c. 15, for sending a threatening letter to *Daniel Dancer*, demanding the sum of ten pounds. The indictment consisted of twelve counts, some of which charged, that the prisoners sent and delivered the said letter; and others that they caused it to be sent and delivered. It appeared in evidence that *Mary Hammond* had written the letter in question; and that it was delivered to the prosecutor by *John Hammond*, who said he had found it in the prosecutor's garden. The prisoners were husband and wife, and they lived in the prosecutor's house in the character and capacity of servants; but there was no evidence that *John Hammond* had any knowledge of the contents of the letter. The counsel for the prisoners submitted to the court, that the offence described by the statutes 9 G. c. 22, and 27 G. 2. c. 15, on which the indictment was founded, consisted in knowingly sending a threatening letter; but that the evidence only proved that *Mary Hammond* had written the letter in question, and that *John Hammond* had delivered it; and that there was no proof whatever of its having been in any

What shall be deemed sending a threatening letter.

Mary Hammond's case,

any way whatever *sent* to the prosecutor. The court thought the objection, as to the definition of the offence, well founded. In all cases, they said, so highly penal as the present case is, it is necessary not only to consider the intention of the legislature, but to bring the offender within the words of the act of parliament itself. The act of merely writing a threatening letter will not constitute this offence; for unless the writer or contriver of such a letter afterwards *send* it to the party, whose fears the threat it contains was calculated to alarm, it cannot possibly produce the mischief which the legislature intended alone to suppress; and they have accordingly adapted the words of both the statutes to that exigency, *viz.* "If any person shall *send* any such letter, they shall be guilty of felony," &c. Now it is impossible to conceive that *carrying* a letter can by any construction be comprehended under the words "*send* any letter," which are the precise terms in which the statutes are penned. There can be no doubt, however, if the legislature at the time they passed these acts, had been asked, Whether the "*carrying* a threatening letter," or to make it more like the present case, "*delivering* a threatening letter," was an offence which they meant to punish, and of the same kind as that which they had described by the words "*sending* a threatening letter, but that they would have answered, without doubt or hesitation, in the affirmative. The judges however are not to consider, what the legislature would have done in certain cases, but to look at the words they have used, and to construe them according to the meaning which it is most likely they entertained at the time the subject was under their consideration. Now, at the time these statutes passed, it seems that the legislature never had it in contemplation that any person would be the *carrier* of a threatening letter which he himself had written or contrived. They undoubtedly conceived that such a letter would be *sent* by the post, or by some other *secret* conveyance, so as to prevent the object of it from discovering the person from whom it was sent. It is clear, therefore, that the act of delivering a threatening letter, is not the offence described in the statutes of 9 G. c. 22, and 27 G. 2. c. 13. But if any doubt could be entertained upon this subject, the legislature itself has removed it; for by a subsequent act of parliament, 30 G. 2. c. 24, the offence of *delivering* as well as *sending* a threatening letter, is made a *misdemeanor*, punishable in the discretion of the court, according to the circumstances of the case. This statute makes it evident, that, where the legislature intended that a particular act should become an
essential

essential ingredient in erecting the offence, they knew how to make use of proper words to express that intention; and affords incontrovertible proof, that they had it not in contemplation to make the *delivery* of a threatening letter *felony*, at the time the statutes, on which the present indictment is founded, were passed. But there is still a question in this case for the consideration of the jury; for, though *Mary Hammond* is the wife of the other prisoner, yet, if the jury are of opinion that she wrote the letter herself, without any interference of her husband, and *sent* it by him, without his knowing any thing of the contents, to the prosecutor, she alone may be found guilty; but otherwise, both the prisoners must be acquitted. The judge left it accordingly to the jury, and they found both the prisoners *Not Guilty*. *Leach's Cas. in Cr. Law.. 385.*

Libel.

I. *What Degree of Defamation will amount to a Libel.*

II. *Who are punishable as Authors or Publishers of a Libel.*

III. *How punishable.*

I. *What Degree of Defamation will amount to a Libel.*

LIBEL, *libellus*, literally signifying a little book, is defined, a malicious defamation, expressed either in printing or writing, or by signs or pictures; tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, and ridicule. 1 *Haw.* 193. 5 *Mod.* 165.

Since the chief cause for which the law severely punishes all offences of this nature, is a direct tendency of them to a breach of the public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind,

Definition of libel.

Libels are severely punished, as having a direct tendency to the breach of the peace.

kind, which, of all others are more sensibly felt ; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking as that which is expressed by writing or printing, why should it not be equally criminal ? 1 *Haw.* 193.

Ironical defa-
mation is libel-
lous.

And scandal expressed in a scoffing and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms ; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier ; and another to be imitated for his learning, who is known to be a great general, but no scholar ; and the like : which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. 1 *Haw.* 194.

Or certain let-
ters or charac-
ters.

It has also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after, it must clearly be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large ; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions : and it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. 1 *Haw.* 194.

A charge may
be libellous,
though no
flagrant crime
may be imputed
to the party.

As every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations of him as tend to lessen him in the esteem of the world, and take away his reputation, which to some men is dearer than life itself : hence it has been held, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a scurrilous ignominious light ; for these equally create ill blood, and provoke the parties to acts of revenge and breaches of the peace. 5 *Co.* 125. 1 *Rol. Abr.* 37.

The party can-
not justify a li-
bel on account
of its truth.

It seems clearly agreed, that in an indictment or criminal prosecution for a libel, the party cannot justify that the contents thereof are true, or that the person upon whom it is made had a bad reputation ; since the greater appearance there is of truth in any malicious invective, so much the more provoking it is ; for, as my lord *Coke* observes, in a settled state of government the party grieved ought to

complain for every injury done him, in the ordinary course of law, and not by any means to revenge himself by the odious course of libelling or otherwise. 5 Co. 125. Hob. 253. 1 Haw. 194.

H. 8 G. K. v. Bickerton. On a motion for an information for a libel, in advertising that one *Madox*, an apothecary, had personated one *Dr. Crow*, a physician, and wrote and took his fee (which the apothecary did not pretend to deny), the chief justice declared, that though truth be no justification for a libel, as it is for defamatory words, yet it will be sufficient cause to prevent the interposition of the court in this extraordinary manner, and induce them to leave it to the ordinary course of justice before a grand jury. Whereon the rule for an information was discharged. Str. 498.

It matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame; for, in a settled state of government, the party grieved should complain, for any injury done to him, in the ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise. 5 Co. 125. But this is to be understood, when the prosecution is by information or indictment; but in an action on the case, which is meant to repair the party in damages, the defendant may justify the truth of the facts, and shew that the plaintiff has received no injury. 3 Blackst. 126.

Of the truth or falshood of a libel.

A writing inveighing against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 Salk. 224.

A general accusation is not a libel.

A libel is either in writing, or without writing: in writing, when an epigram, rhyme, or other writing is published to the contumely of another, by which his fame or dignity may be prejudiced; without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to fix a gallows, or other reproachful and ignominious signs at a man's door. 5 Co. 125.

E. 7 G. Mayor of Northampton's case. He sent lord *Halifax* a licence to keep a public house, which the court said was a libel in the case of a person of his quality, and granted an information for it. Str. 422.

The offence is the same, whether the person libelled be alive or dead. 5 Co. 125.

But though every species and degree of calumny and detraction of this kind are deemed odious in the eye of the law, The court of King's Bench have a discre-

tionary power
in granting an
information for
a libel.

law, and punishable either by civil action or criminal prosecution in most cases, at the election of the party injured; yet the court of King's Bench, whose jurisdiction herein is founded upon the necessity of preventing quarrels and ill blood, and which deals with this offence as of dangerous consequence, and destructive to the peace of the nation, always exercises a discretionary power in granting an information for an offence of this nature, and will, in many cases, leave the party to his ordinary remedy; as where the application is made after a great length of time; so where the matter complained of as a libel happens to be true; so where the granting the information would be a discouragement to learned inquiries; or where the matter complained of was intended for reformation, not defamation. 3 *Bac. Abr.* 492.

So where a man advertises in a public newspaper, that his wife had eloped from him, and cautioned all persons from trusting her; and an information for a libel being moved for, it was denied, because it was the only way the husband could take to secure himself. 3 *Bac. Abr.* 492. *K. v. Enes*, 5 *G.* 2.

No libel in a
regular appli-
cation to a
court of justice.

It seems to be clearly agreed, that no proceeding in a regular course of justice will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecutions in respect of their applications to a court of justice; and the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and oblige them to refer the decision of their grievances to those whom the law has appointed to determine them. *Dyer* 285. 2 *Inst.* 228. 1 *Haw.* 194.

Therefore it has been resolved, that no false or scandalous matter contained in a petition to a committee of parliament, or in articles of the peace exhibited to justices of the peace, are libellous. 1 *Lev.* 240. 1 *Haw.* 194.

II. Who are punishable as Authors or Publishers of a Libel.

Composer, pro-
curer, or pub-
lisher of a libel.

Not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, are in danger of being punished for it; and it is said not to be material, whether he who disperses a libel

libel know any of the contents or effect of it or not; for nothing would be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher, would make him safe in dispersing them. 1 *Haw.* 195.

It has also been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Respecting a libel.

It has also been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove, that he delivered it to a magistrate to examine it. 1 *Haw.* 195.

Copying a libel

It has been constantly ruled of late, that the buying of a book or paper, containing libellous matter, in a bookseller's shop, is sufficient evidence to charge the master with the publication, though it does not appear that he knew of any such books being there, or what were the contents thereof; and it will not be presumed that it was brought and sold there by a stranger; but the master, if he suggests any thing of this kind in his excuse, must prove it.

Seller of a libellous book or paper.

H. 2 G. 2. K. v. Elizabeth Nutt. On an information for publishing a treasonable libel, on the evidence it appeared, that the defendant kept a pamphlet shop, and that this libel was sold in the said shop, by the defendant's servant, for the defendant's use and account, in her absence, and that she did not know the contents of it, nor of its coming in or going out. *Raymond*, chief-justice: The defendant is guilty of publishing this libel, the shop being kept under her authority and direction, and it would be of very dangerous consequence if the law was otherwise: and it has been so ruled in a great many instances. *Fitz-Gibbons*, 47.

And it has been ruled, that the finding a libel on a bookseller's shelf, is a publication of it by the bookseller; and that it is no excuse to say, that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. 1 *Seff. Cas.* 33. *K. v. Dodd*, 10 G.

Finding a libel on a bookseller's shelf.

It seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing; the essence of a libel consisting in writing it; for if a man speaks such words, unless they are put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Writing a libel from another's dictation.

It

Linen Cloth.

It has also been resolved, that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. 1 *Haw.* 195.

III. How punishable.

There can be no doubt but that a person who writes or publishes a libel, is subject to the action of the party injured, in which damages shall be recovered: or, being convicted on an indictment or information, shall pay such fine, and also suffer such corporal punishment as to the court, in discretion, shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. *Cro. Car.* 175.

And it has been adjudged that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw.* 40.

All matters of crime being local, a libel must be proved to be written or published in the county laid in the indictment. *Read. lib.* 3. *St. Tr.* 774, 775. 4 *St. Tr.* 672.

In an action for a libel, the court will change the venue into a county in which it was both written and published.

E. 29 *G.* 3. *Freeman v. Norris.* *Manley* moved to change the venue in this cause, which was for a libel contained in a letter written in one place and sent to another, both in the same county. And he observed that this did not fall within the reason why the court had refused to change the venue in cases where the libel was published in a provincial newspaper, because it was circulated in several counties, or in a letter written in one county and sent into another; for here the whole publication was confined to one county, in which alone the cause of action arose. The court, after a little consideration, granted the rule. 3 *Durnf. & East*, 306.

Linen Cloth.

I. Regulations respecting the Manufacture of Linen Cloth.

II. Duties on Linen Cloth, Silks, Cottons, and Calicoes.

I. Regulations

I. Regulations respecting the Manufacture of Linen Cloth.

BY the 15 C. 2. c. 15. *f.* 2, Any person, whether native or foreigner, may, without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling, or dressing of hemp or flax; as also for making or whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings.

Who may set up trades in the different branches of the linen manufacture.

And by the same statute, *f.* 2, All such foreigners as shall use any of the trades aforesaid for three years, shall enjoy all privileges as natural born subjects, on their taking the oaths of allegiance and supremacy before two justices near their dwellings.

Indulgence to foreigners.

The statute of 1 *Eliz.* c. 12, recites, That whereas certain evil-disposed persons, by sundry devices, stretch linen cloth both in length and breadth, and then with battledores, or otherwise, beat the same, casting thereupon certain deceitful liquors, mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loosened and made weak: it therefore enacts, That if any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, such cloth shall be forfeited, and the offender shall be punished, by one month's imprisonment at the least, and pay such fine as the justices shall assess. *f.* 1.

Using deceit in making linen cloth.

And the judges of assize, and justices of the peace, or three of them (1 *Q.*) may hear and determine the same, in their sessions, by information, indictment, or upon the traverse of any presentment or indictment found before them. *f.* 2.

And any person who shall seize any such deceitful linen cloth, shall, at the next sessions, or before two justices (1 *Q.*) make due information of the offence and of the seizure; or he shall procure the offender to be indicted at the next sessions, and be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay half what he shall recover to the sheriff, or other accountant, to the use of the king: the other half shall go to the informer or prosecutor. *f.* 3.

Linen Cloth.

And the justices, before whom the offence shall be tried, shall yearly, at *Michaelmas*, certify the same by estreat into the Exchequer, as they do other estreats; and thereupon the barons may make process for so much thereof as appertains to the king, in like manner as for other fines. *f. 4.*

Stealing linen cloth.

By the 18 G. 2. c. 27, it is enacted, That if any person shall, by day or night, feloniously steal any linen, fustian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn, linen or cotton tape, inkle, filletting, laces, or any other linen, fustian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10s. or shall knowingly buy or receive any such wares stolen, he shall be guilty of felony without benefit of clergy.

Breaking into a house, shop, &c. with intent to steal, cut, or destroy linen, is death without clergy.

And the 4 G. 3. c. 37, enacts, That any person who shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, or vault, or other place or building, with intent to steal, cut, or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods, when exposed either to bleach or dry, shall be guilty of felony without benefit of clergy. *f. 16.*

Forging stamps to English cambrics and lawns.

By the 4 G. 3. c. 37, and 7 G. 3. c. 43, concerning the making and stamping cambrics and lawns made in *England*, it is enacted, That if any person shall forge or counterfeit any such stamp, he shall be guilty of felony without benefit of clergy.

Affixing counterfeit stamps on linen cloth, in imitation of those on Scotch and Irish linens.

And by the 17 G. 2. c. 30. *f. 1.* Any person who shall cause any stamps to be affixed to any foreign linens imported, in imitation of the stamps put on *Scotch* or *Irish* linens, shall forfeit 5*l.* for each piece: or any person who shall expose, or pack up for sale any foreign linens (knowing them to be so stamped) as the manufacture of *Scotland* or *Ireland*, shall forfeit the same, and 5*l.* for each piece. And any person who shall affix any counterfeit stamp on any linen of the manufacture of *Great-Britain* or *Ireland*, in order to vend the same as linens duly stamped, shall forfeit 5*l.* for each piece: and any person who shall expose or pack up for sale, any such linens, knowing them to be so stamped, shall forfeit the same, and 5*l.* for each piece. *f. 1.*

Method of conviction.

And by the same statute, *f. 2.* One justice may convict the offender, on the oath of one witness, and grant his warrant for distress and sale; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to gaol for six months,

months, unless it be paid sooner : which penalty shall go to the informer, deducting 2s. in the pound to be paid to the constable who shall execute the warrant.

By the 27 G. 3. c. 13, it is enacted, That cambrics or *French lawns*, legally imported, may be worn, used, or consumed in *Great-Britain*, or sold, or exposed to sale therein, and shall not be subject to seizure or forfeiture ; nor shall the person importing, wearing, using, consuming, selling, or exposing to sale the same, or having the same in his custody or possession, be liable to any penalty for such act. *f. 23.*

Cambricks or French lawns may be imported and worn in Great-Britain.

And whereas many persons may have incurred penalties, for offences committed against the laws prohibiting the importation of cambrics or *French lawns*, otherwise than by licence and for exportation, and prohibiting the wear or use thereof in this kingdom, by reason of having the same in their custody or possession for sale or otherwise, it is enacted, That no person (except those under prosecution) shall be prosecuted for any penalty incurred before *May 10, 1787*, on account of their having had in their custody or possession for sale or otherwise any such cambrics or *French lawns*. 27 G. 3. c. 32. *f. 9.*

II. Duties on Linen Cloth, Silks, Cottons, and Calicoes.

By the 24 G. 3. c. 41. *sess. 2. f. 1, 7*, Every calico printer, and printer, painter, or stainer of silks, linens, cottons, or stuffs, shall take out a licence for which he shall pay 10*l*; and such licence shall be renewed annually, ten days at least before the end of the year, on pain of forfeiting 5*0**l*.

Calico printers, and printers of silks, linens, cottons, or stuffs, to take out an annual licence.

By the 27 G. 3. c. 13, From and after *May 10, 1787*, all former duties are repealed.

Repeal of former duties.

And in lieu thereof the following duties shall be paid on all goods (except such as shall be dyed throughout of one colour only) which shall be printed, stained, painted, or dyed in *Great-Britain*, viz.

For every yard in length (reckoning yard-wide) of foreign calicoes and muslins

£.	s.	d.
0	0	7

For every yard in length (reckoning yard-wide) of linens and stuffs, made either of cotton or linen mixed with other materials, fustians, velvets, velverets, dimities, and other figured stuffs, made of cotton and other materials mixed, or wholly made of cotton-wool, wove or

G 2

printed

Linen Cloth.

printed in *Great-Britain*; and stuffs made of woollen, or whereof the greatest part in value is woollen

£. s. d.
0 0 3½

For every yard in length (reckoning yard-wide) of stuffs wholly made of cotton-wool wove and printed in *Great-Britain*, commonly called *British manufactory* and *British muslins*

0 0 3½

For every yard in length (reckoning half-yard-wide) of silks printed as aforesaid (silk handkerchiefs excepted), over and above the duties payable on importation

0 1 1½

For every yard square of silk handkerchiefs printed as aforesaid, and so in proportion if wider or narrower, besides the duties payable on importation

0 0 4½

The said duties to be paid by the printer, stainer, painter, or dyer thereof.

And for every yard in length (yard-wide) of *French* printed or dyed calicoes or muslins (except dyed of one entire colour as aforesaid) imported from *France*

0 0 7

And for every yard in length (yard-wide) of *French* printed or dyed linens and stuffs, made either of cotton or linen mixed with other materials, fustians, velvets, velverets, dimities, and other figured stuffs, made of cotton and other materials mixed, or wholly made of cotton-wool (except dyed of one entire colour as aforesaid) imported from *France*

0 0 3½

Doubts having arisen whether *ribbands* and *silks* so printed, stained, or painted, being less than half a yard in breadth, are within the meaning of the said acts; it is declared, by the 7 G. 3. c. 47, That all ribbands and silks printed, stained, or painted in *Great-Britain*, though less than half a yard in breadth, are within the meaning thereof and liable to the said duties, according to the proportions in which such ribbands and silks are made. *f. 6.*

Houses to be entered.

Every such printer, painter, stainer, or dyer, shall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 50*l.* 10 *Ann. c. 19 f. 71.* 25 G. 3. c. 72. *f. 1.*

Painting or staining such good at any other place.

And by the 1 G. 3. c. 36, *f. 21.* If any person shall take upon him to print, paint, stain or die any silks, linens, or stuffs, at any other place than that of his usual residence or exercise of his trade, he shall first make entry with the officer

officer of his division, where he intends to do the same, and pay down the duties; on pain of 50*l*.; and the said goods shall also be seized and forfeited.

The officer shall at all times, by day or by night, (by night in the presence of a constable) be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make a report thereof in writing to the commissioners, or to whom they shall appoint; leaving a copy (if demanded) under his hand; and if he shall not leave such copy (after demand in writing, 12 G. c. 28, f. 30) he shall forfeit 40*s*. 10 Ann. c. 19, f. 75.

Officer to enter at all times, and take account.

And if any of the said persons shall obstruct the officer in the execution of his duty, he shall forfeit 200*l*. 10 Ann. c. 19, f. 78. 25 G. 3. c. 72, f. 8.

Obstructing the officer in his duty.

Every such printer, &c. shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, with the names and places of abode of the owners (if they are not their own); on pain of 50*l*. 10 Ann. c. 19, f. 72.

Entry of goods to be made.

But by the same statute, f. 73, No person shall be obliged to go farther than the next market-town to make entry.

If the officer should miss any of the goods of which he had taken an account in his last survey, and shall not on reasonable demand receive a satisfactory account of what is become of the same, he may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. Same stat. f. 77.

Officer may charge duty for goods missing.

And if any printer shall conceal any of the said goods, to avoid the duty, he shall forfeit 50*l*. And all the silks, calicoes, linens, and stuffs found in any private workhouse, or other place, whereof no notice has been given, or the value thereof, shall be forfeited. 10 Ann. c. 19, f. 82. 25 G. 3. c. 72, f. 13.

Concealing goods.

And by the 25 G. 3. c. 72, f. 9. No printer shall begin to print, stain, paint, or dye any of the goods aforesaid, before they shall have been measured, and marked at both ends by the officer with a frame-mark; on pain of forfeiting the same, and 20*l*. for every piece.

Pieces to be marked before printed.

In the case of *K. v. justices of Surry*, E. 28 G. 3, it was determined, that no appeal lies to the sessions from a conviction of two justices, for an offence under the 25 G. 3. c. 72, f. 9, for printing cotton before it was measured and marked by the proper officer of excise, according to the directions of the act; notwithstanding it contains a general

clause of reference to all former excise laws, and incorporates all the powers, &c. provided by 12 C. 2. c. 24, or by any other law relating to the excise or inland duties under the management of the commissioners of excise, for managing, mitigating, and adjudging the duties or penalties granted by this act. 2 Durnf. and East. 504.

Defacing frame-marks.

And any printer who shall wilfully cut out or deface such frame-mark shall forfeit 50*l.* *f.* 11.

Penalty on keeping goods in unentered places.

And by the same statute, *f.* 14, No printer shall keep any such goods, marked or unmarked, in any room or place whereof notice shall not have been given, as aforesaid; on pain of 50*l.* together with such goods, which may be seized by any officer.

Removing goods before stamped.

And no person shall remove any the said goods till the officer has taken account thereof, and till each piece be stamped or marked at both ends; on pain of 50*l.*; and what shall be carried away without being marked, which shall be found in the possession of any draper, or other person for his use for sale, may be seized, or the value thereof recovered. 10 Ann. c. 19. *f.* 79. 25 G. 3. c. 72. *f.* 12.

Goods surveyed to be kept by themselves.

Every printer shall keep the goods which have not been surveyed, separate from those which have been surveyed; on pain of 50*l.* 10 Ann. c. 19. *f.* 81. 25 G. 3. c. 72. *f.* 18.

Payment of duties in six weeks.

By the 10 Ann. c. 19, *f.* 74, Every printer shall, within six weeks after entry, clear off the duties, on pain of forfeiting double: and if they shall deliver out such goods, after default in payment of the duties, before the same shall be cleared off, they shall forfeit double value of the goods. 10 Ann. c. 19. *f.* 74.

Goods found unstamped may be seized, and the person having them forfeits 100*l.*

Should any of the said goods be found in any place, on land or water (unless on ship-board for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; such goods shall be forfeited, and may be seized by any officer of the customs or excise; and the person in whose custody they are found shall forfeit 100*l.* 5 G. c. 11. *f.* 15. 27 G. 3. c. 31. *f.* 16.

On reasonable suspicion, search may be made for goods unstamped.

On oath by any credible person, of his having reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped; (or any French linen, stuffs, fustian, velvet, velveret, dimity, or other figured stuffs for which the duty has not been paid, 27 G. 3. c. 31. *f.* 15) the commissioners within the bills, or two justices elsewhere, may issue their warrants, requiring some officer of the said duties (taking a constable with him) in the day-time to search for the same, and to open doors, chests, trunks, and package, and

and to seize such goods, and bring them to the next office.
10 Ann. c. 19. s. 98. 25 G. 3. c. 72. s. 18.

Painted or stained calicoes not being used for wearing ap- Prohibition of printed calicoes in apparel.
 parel, the printing or staining of them must be chiefly in
 order for exportation; for by the 7 G. 3. c. 7, No person
 shall use or wear in any apparel, any printed, painted, stained,
 or dyed calicoe; on pain of 5*l.* to the informer; who shall,
 on information on oath in six days after the offence, sum-
 mon the party, and upon his appearance or contempt, ex-
 amine the matter; and on proof, by confession, or oath of one
 witness, determine the same, and on conviction cause the
 penalty to be levied by distress and sale, rendering the over-
 plus (charges of distress and sale being first deducted); Pro-
 vided that persons aggrieved may appeal to the next quarter-
 sessions, giving six days notice. *s. 1.*

And any person who shall offer the same to sale, or any Penalty on sel- ling printed calicoes.
 household furniture made up of or mixed therewith, unless for
 exportation, shall forfeit 20*l.*; half to the informer, and half to
 the poor where the offence shall be committed, to be re-
 covered in the courts at *Westminster*, with full costs, on
 prosecution in six months; and if he is a steward or other
 officer of a corporation, he shall also forfeit his office. *s.*
2. 4.

And by the same statute, no person shall use the same in Or using them in furniture.
 any household furniture, on like pain of 20*l.* *s. 3.*

But this shall not to extend calicoes dyed all blue, *s. 11.*

But it shall extend to stuff made of cotton, or mixed
 therewith, printed, or painted; and to callico chequered or
 striped; and to callico stiched or flowered in foreign parts
 with any colour (muslins, neckcloths, and fustians excepted.)
s. 10.

But by the 9 G. 2. c. 4, It shall be lawful to use stuff made
 of linen yarn and cotton-wool manufactured and printed or
 painted in *Great-Britain*, provided the warp thereof be
 entirely linen yarn.

Doubts having arisen, whether stuffs wholly made of raw Doubts respect- ing calicoes re- moved.
 cotton-wool within this kingdom ought not to be considered
 as calicoes, and as such be liable to the like duties, penalties,
 and prohibitions; it is enacted by the 14 G. 3. c. 72, That
 no greater duty shall be paid for the same than 3*d.* a yard as
 aforesaid, and that any person may use the same in apparel
 or otherwise. *s. 1, 2.*

And in every piece thereof shall be wove in the warp in both To be distin- guished by three blue stripes in the selvages.
 selvages three blue stripes, each stripe of one thread only;
 the first of which stripes shall be the first or outermost thread,
 the second of the said stripes shall be the third thread, and the

Linen Cloth.

third of the said stripes shall be the fifth thread ; and each piece shall be stamped at each end with a stamp provided by the officers of excise ; and instead of the word *calico*, which stands for foreign calicoes, each piece shall be marked with the words *British manufactory*. *s. 3.*

Penalty on selling stuffs, wholly of cotton, without such marks.

And any person who shall expose to sale any stuffs wholly made of cotton, and printed, painted, stained, or dyed (muslins, neckcloths, and fustians excepted), wherein such mark shall not be woven, shall forfeit the same, and 50*l.* for each piece. *s. 4.*

But nothing in this act shall extend to cotton-velvets, velverets, or other fustians, not manufactured in *Great-Britain*. *s. 5.*

Any person who shall import any calicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn, and cotton-wool mixed, or wholly of cotton-wool, wherein shall be wove in the selvedge any such blue stripe, shall forfeit the same, and 10*l.* for each piece. *s. 9.*

Counterfeiting stamps.

And any person who shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp, shall be guilty of felony without benefit of clergy. *s. 8, 10.*

On reasonable suspicion, search may be made for goods unstamped.

The same statute, *s. 11*, enacts, That on oath made by any person, that he has reason to suspect, that any printed, painted, stained, or dyed stuffs, wholly made of cotton, for which a duty ought to have been paid, are in the possession of any draper or other person for his use, without such stamps or marks as aforesaid ; two commissioners within the bills, and two justices elsewhere, shall issue their warrant to any officer of the said duties with the assistance of a constable, in the day-time, to search for the same, and to open doors, trunks, chests, and package, and to seize such goods, and bring them to the next office for the said duties.

Penalties how distributed.

Half the penalties and forfeitures on this act shall be to the king, and half to him who shall sue. *s. 12.*

Proof to lie on the owner.

Should any question arise, whether any of the said stuffs wholly made of cotton were manufactured in *Great-Britain*, the proof shall lie on the owner, and not on the prosecutor. *s. 14.*

Calicoes, &c. to have three blue threads in the selvedge.

By the 25 *G. 3. c. 72. s. 19*, All stuffs wholly made of cotton-wool commonly called *calicoes*, not having three blue threads in each selvedge as directed by 14 *G. 3. c. 72*, shall be deemed *foreign calicoes* ; and on their being printed or dyed as aforesaid, shall be marked at both ends of every piece or remnant with the words *foreign calicoes for exportation* ; and every draper or dealer having in his custody any such

such goods, (except dyed throughout of one colour) or any stuffs wholly made of cotton-wool wove in *Great-Britain*, commonly called *British manufactory* (muslins, neckcloths, and fustians excepted) not having such blue threads, shall forfeit 200*l*, and every such piece found in his custody.

And by the same statute, *s. 20*, The owner or printer of any piece or remnant of *coffae* or foreign *muslins* and *calicoes*, shall, before they are presented to the officer, mark them at both ends with a frame-mark, containing in words at length his name and place of abode, and also the name such goods are commonly known by, (except those dyed throughout of one colour) on pain of forfeiting 10*l*. for every piece or remnant.

To be marked with a frame-mark before printing.

And the owner or printer of any piece or remnant of linens or stuffs made of cotton mixed, or wholly made of cotton-wool wove in *Great-Britain*, called *British manufactory*, or *muslins*, plain, chequered, striped, figured or ornamented (except fustians, velvets, velverets, dimities and other figured stuffs) shall mark them at both ends with a frame-mark, containing in words at length, his name and place of abode, and the name and quality of such goods, with the ready money price thereof, before such goods are presented to the officer in order to be printed or dyed: and if the owner is not the printer, he shall deliver a note with such goods, expressing the number of pieces, their quality and value, and the time when delivered to the printer or dyer; which note shall be delivered by him to the officer before the same are printed or dyed, (except those dyed of one colour as aforesaid); on pain that every such piece not so marked, shall be forfeited, and may be seized by any officer; and the owner, or person putting out the same, shall forfeit 20*l*. And if such person shall mark any such piece at a less price than the real value as aforesaid, he shall forfeit the same, which may be seized as aforesaid, and also 20*l*. *Id. s. 21*.

Name of the owner or printer, and the real value of the goods, to be marked.

Any person who shall counterfeit the stamp, shall be guilty of felony without benefit of clergy.

Counterfeiting the stamp.

And any person who shall knowingly sell any the said goods with a counterfeit stamp, shall forfeit 100*l*, and be set in the pillory in some public place two hours. *10 Ann.*

Knowingly selling with a counterfeit stamp.

c. 19, s. 97. 13 G. 3. c. 56. 25 G. 3. c. 72. s. 17.

And it is enacted by the *27 G. 3. c. 31*, That if any person shall knowingly sell any of the said goods with such counterfeit stamp, with intent to defraud his majesty, he shall be guilty of felony without benefit of clergy. *s. 14.*

Further punishment by *27 G. 3.*

If the frame-mark shall happen to be defaced, the printer shall

Frame-marks give being defaced.

Linen Cloth.

give notice thereof to the officer, who shall renew the same.
Id. f. 22.

Counterfeiting
the frame-mark.

And any person who shall counterfeit or forge any frame-mark shall forfeit 100*l.* *Id.* f. 23. 27. G. 3. c. 31. f. 12.

Exportation.

Every person who has paid the duties, or bought such goods of any one who has paid the duties, may export them, and they shall be allowed such drawbacks as are set forth in 27 G. 3. c. 13. on conforming to the following conditions, (*viz.*) The person intending to export such goods, shall give twelve hours notice in writing, if within the limits of the chief office; elsewhere twenty-four hours, of his intention to pack them up, and of the time and place, to the officer appointed for that purpose, who shall measure the said goods, and see that the stamps and frame-marks are taken off; and every piece shall be packed up in the presence of such officer, and sealed and marked as the commissioners shall direct; and any person who shall open such package, or deface such seal or mark, (except the officer at the port of exportation) shall forfeit 20*l.* And the officer who saw them packed up shall take an account of the kinds and quantities thereof, and make a return to the officer who shall be appointed to receive the said goods at the port of exportation. And such person shall give six hours notice in writing to such officer, of the time and place of shipping them; and shall also give bond that such goods shall not be unshipped or relanded, or put into any other vessel (unavoidable accidents excepted.) And if any person shall unship or reland, or put into any other ship (except as aforesaid), any such goods, they shall be forfeited, over and above the penalty of such bond. 25 G. 3. c. 72. f. 27, 28, 29, 30. 25 G. 3. c. 74. f. 17, 19, 20, 21.

And by the 25 G. 3. c. 74. f. 18, If such person shall not begin to pack the said goods within one hour after the time mentioned in such notice, it shall be void, and he shall be obliged to give a fresh notice. 25 G. 3. c. 74. f. 18.

Provided that nothing herein shall extend to authorize the exportation of any goods, other than they might have been exported before, nor to alter the manner thereof, except as aforesaid. 25 G. 3. c. 74. f. 22, 23.

And by the 27 G. 3. c. 31. f. 8, Within thirty days next after the master or purser of any vessel wherein any *French* printed or dyed calicoes, muslin, linen stuff, fustian, velvet, velveret, dimity, or other figured stuff (other than dyed throughout of one colour) shall be imported, shall make entry thereof upon oath with the collector, as directed by 13 & 14 G. 2. and, before the landing of such goods, pay the

the duties, and within such thirty days shall land the same; on pain of forfeiting such goods, with the package containing them, which may be seized by any officer of excise. 27 G. 3. c. 31. s. 8.

And on the importation of any of the said goods, a duty shall be paid as set forth in a schedule annexed. 27 G. 3. c. 31. s. 8. Importation.

All the utensils and instruments for printing, painting, staining, or dying such goods, in the custody of any of the said persons, or any other to his use, shall be liable to all arrears of the duty, and all penalties concerning the same, as if such person were the lawful owner. 10 Ann. c. 19, s. 83. 25 G. 3. c. 72, s. 15. Utensils liable to arrears and penalties.

The penalties (except as is above mentioned in relation to calicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him who shall discover, inform, or sue. 10 Ann. c. 19, s. 92. 24 G. 2, c. 40, s. 33. 25 G. 3, c. 72, s. 33, 34. Power of the justices.

By the 4 G. 3, c. 37, (which establishes the corporation of the *English* linen company for making cambrics and lawns) it is enacted, That the commissioners of excise, where there shall be a manufactory of cambrics or lawns, or goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. s. 17, 18. Cambrics and lawns to be marked by the excise officers.

And the manufacturer shall give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom, who shall seal it at both ends; on pain that such manufacturer shall forfeit 5/; and every such piece taken out without giving notice, and not being sealed, shall be forfeited, and may be seized by any officer of the customs or excise. s. 19.

And the officer with convenient speed, after notice, shall mark and number each piece; and make entry in writing, in books provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10/. s. 20. Officer to mark and number each piece,

But if he shall mark any not made in England, or after the same is taken out of the looms, he shall forfeit 50/. for each piece, to him who shall sue, and also forfeit his office, and be rendered incapable of holding any other office of trust under the crown. s. 21. Penalty on not marking.

If, by bribery or otherwise, any person should prevail on the officer to commit such offence, he shall forfeit 100/, and stand

stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50*l*. *f*. 22.

Officers to transmit an account yearly.

Having in possession cambrics and lawns made in England.

Such goods when seized shall be exported.

Proof to lie on the owner.

Counterfeiting the seal.

And the officer shall yearly, in *June*, transmit to the commissioners an account of all the goods he shall have stamped, and a copy of the entries made; on pain of dismissal: And he, or his executors, shall deliver up the seals, on demand from the commissioners; on pain of 200*l*. *f*. 23.

And all cambrics and lawns made in England, which shall be found unstamped, shall be forfeited, and may be seized by any officer; and after condemnation shall be sold: and any person who shall sell or expose to sale, or have in his custody for that purpose, any cambrics or lawns made in *England*, unmarked, shall forfeit 200*l*. *f*. 24.

But the said goods so seized, condemned, and sold, shall not be worn in this kingdom; they shall therefore be exported, and shall not be sold but upon condition of exportation; and they shall not be delivered out of the warehouse till bond be given, to the satisfaction of the collector, in double penalty of the goods, that they shall be exported, and not relanded. *f*. 25.

Should any question arise respecting where the goods were manufactured; the proof shall lie on the owner or claimer, and not on the officer. *f*. 31.

Should any person counterfeit the seal appointed by this act or import any foreign cambrics or lawns with such counterfeit mark thereon; or expose them to sale knowing the stamp thereon to be counterfeited; he shall be guilty of felony without benefit of clergy. *f*. 26.

All goods which shall be condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, and be applied (after a deduction of all charges) half to the king, and half to the officer or other person who in pursuance of this act shall seize, inform, or sue. *f*. 28.

Ling, Burning of. See BURNING.

Lord's Day, See SUNDAY.

Lotteries.

Lotteries declared a nuisance by 10 & 11 W.

BY the 10 & 11 W. c. 17, All lotteries are declared to be public nuisances; and all grants, patents, and licenses for such lotteries to be against law. *f*. 1.

And

And by the same statute, *f. 2*, Every person who shall expose to be played, drawn, or thrown at, or shall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person who shall expose to be played, drawn, or thrown at, any such lottery, play, or device, shall forfeit 500*l*; one third to the king, one third to the poor, and one third, with double costs, to him who shall sue in the courts at *Westminster*. The offenders shall also be prosecuted as common rogues, according to the statutes in that case made.

Penalties on keeping or playing at a lottery.

And every person playing, throwing, or drawing at any such lottery, play, or device, shall forfeit 20*l*. in like manner. *f. 3*.

Penalty on playing.

By the 9 *Ann. c. 6. f. 56*, Justices of the peace, mayors, constables, and other civil officers, shall use their utmost endeavours to prevent the drawing of any such unlawful lottery; and every person who shall set up, or by writing or printing publish the setting up any such unlawful lottery, with intent to have it drawn, shall forfeit 100*l*; one third to the king, one third to the poor, and one third, with full costs, to him who shall sue in the courts at *Westminster*.

Justices, &c. to endeavour to suppress lotteries.

And by the 10 *Ann. c. 26*, Every person keeping an office, or place for making insurances on marriages, births, christenings, or service, or any other office or place, under the denominations of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of money, shall forfeit 500*l*; one third to the king, one third to the poor, and one third, with full costs, to him who shall sue. And every printer, or other person, who shall, by writing or printing, publish the setting up or keeping any such office or place shall forfeit in like manner.

Insurances of various kinds.

The statute of 8 *G. c. 2*, enacts, That every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other things, for the improvement of small sums of money, to be determined by the chances of the prizes in some public lottery, shall forfeit 500*l*. over and above any penalties by any former act made against private lotteries; and shall also be committed to the county gaol for one whole year, and from thence till the said sum of 500*l*. be paid; and every adventurer therein shall forfeit double the sum contributed, with costs; half to the king, and half to him who shall sue. *f. 36, 37*.

Penalty on selling lands, goods, &c. to be ascertained by the drawing of any public lottery.

And the 12 *G. 2. c. 28*, prohibits the keeping of any such office for the disposal of houses, lands, plate, jewels,

Penalty on keeping a box, &c. wheel, or other

device of
chance.

&c. by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever, on pain of 200*l.* [to be recovered in the courts at *Westminster*, 27 G. 3. c. 1. *f.* 2.]

And such sale
shall be void.

And every such sale of houses, lands, &c. by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. 12 G. 3. c. 28. *f.* 4.

And every adventurer in any of the said games, lotteries, or sales, shall forfeit 50*l.* in like manner. *Id.* *f.* 3.

Persons setting
up an office
without license,
or insuring for
a less time than
the whole time,
or remaining
time of draw-
ing, to be
deemed rogues
and vagabonds,
and punished as
such.

Also by the 27 G. 3. c. 1, Any person who shall publicly or privately set up, or keep, by himself or any other, any office or place for buying, selling, or dealing in lottery-tickets, or shares thereof, without being licensed; or shall sell the chance of any such ticket, or share thereof, for a day or part of a day, or for less time than the whole time of drawing in such lottery then to come; or insure for or against the drawing of any such ticket; or shall receive any money or goods, in consideration of any agreement or promise to repay any money, or to deliver the same; or any plate, jewels, or other goods whatsoever, if any such ticket should prove fortunate or unfortunate; or upon any other chance, event, or contingency, relative to the drawing of any such tickets, whether with respect to the time of their being drawn, or otherwise, shall be deemed rogues and vagabonds, within the meaning of the 17 G. 2. c. 5, and shall be punished accordingly. And such offenders (not having before been sued for the same offence) on proof made of the offence, as by the said act is directed, shall be sent to the house of correction till the next sessions: and the justices, at such sessions, shall examine the cause, and proceed therein as by the said act of 17 G. 2. is directed. And all justices, mayors, constables, and other officers, are required to use their utmost endeavours to prevent the committing any of the offences aforesaid, by all lawful means, and they shall be indemnified.

But cannot be
proceeded
against in both
modes.

But no such person shall be liable to be prosecuted, both by action for the recovery of a pecuniary penalty, and by imprisonment as a rogue and a vagabond. *f.* 17.

And all powers, authorities, rules, directions, punishments, and provisions, prescribed and inflicted by the 17 G. 2. not hereby altered, shall be applied in carrying this act into execution,

execution, respecting the persons hereby declared rogues and vagabonds.

Any person who shall, by colour of any grant from any foreign prince or state, set up any lottery, or undertaking in the nature of a lottery, under any denomination; or shall make, print, or publish any proposal for any such lottery or undertaking; or shall dispose of any ticket in any foreign lottery, and shall be convicted thereof, on oath of one witness, before two justices, he shall, over and above any penalties by former acts against unlawful lotteries, forfeit 200l; one third to the king, one third to the informer, and one third to the poor, to be levied by distress, by warrant of such justices; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200l. be paid. But persons aggrieved may appeal to the next quarter-sessions. 9 G. c. 19. s. 4, 5.

Foreign lot-
teries pro-
hibited.

And by the 6 G. 2. c. 35, it is enacted, If any person shall sell, procure, or deliver any ticket, receipt, chance, or number, in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery; or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate, of any foreign or pretended foreign lottery; or shall receive any money for any such ticket, receipt, chance, or number, or in consideration of any money to be repaid in case any ticket or number, in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate, and shall be convicted thereof in the courts at *Westminster*, or on the oath of one witness, before two justices, he shall forfeit 200l; one third to the king, one third to the informer, and one third to the poor; the same (if convicted before the justices) to be levied by distress, by warrant of such justices; and the offender shall also be committed to the common gaol for a year, and from thence till the 200l. be paid; provided, that persons aggrieved may appeal to the next quarter-sessions. s. 29, 30.

Selling any
tickets, receipts,
or chances in
foreign lot-
teries.

By the 12 G. 2. c. 28. s. 2, The game of ace of hearts, faro, basset, and hazard, shall be deemed games, or lotteries by cards or dice; and any person who shall set up or keep these games shall be liable to all the penalties, for setting up or keeping any the games or lotteries in this act mentioned.

The game of
ace of hearts,
faro, basset, and
hazard.

And every person playing, setting at, staking, or punting at any of the said games, shall forfeit 50l. in like manner.

s. 3.

Finally,

Lunatics and Ideots.

Finally, by the 13 G. 2. c. 19. s. 9, The game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and those games played with the back-gammon tables only excepted) shall be deemed games or lotteries by dice, within the said act of 12 G. 2. c. 28.

Observations.

Public lotteries, till lately, answered hardly any other purpose than that of enabling a minister to procure a loan, by holding forth some little advantages, by way of *douceurs*, to monied men: but the emoluments to the state from that annual source are now very considerable. A plan which produces upwards of two hundred thousand pounds a year, by a *voluntary* tax (however injurious it may be to individuals) is too lucrative to be abandoned. Formerly a lottery was permitted only on particular occasions, and those of some emergency; but it now appears to be a settled annual permanent tax.

N. B. There are usually some temporary clauses in the annual lottery act, which, being temporary, are here omitted.

Lunatics and Ideots.

Who is a lunatic.

A Lunatic is defined to be a person who is sometimes of good and sound memory and understanding, and sometimes not; and so long as he has not understanding, he is *non compos mentis*. 1 *Inst.* 247.

Why so called.

A lunatic has his name from the great influence which the moon has in all disorders of the brain; and, though he has intervals of reason, yet, during his phrensy, he is entitled to the same indulgence, as to his acts, and stands in the same degree with one whose disorder is fixed and permanent. *Co. Litt.* 247. 1 *H. H.* 31.

Who is an ideot.

An ideot is a fool or madman from his nativity, and one who never has any lucid intervals. He is described as a person who cannot number twenty, tell the days of the week, know his own father or mother, or tell his own age, &c. But these are mentioned as instances only; for ideot, or not, being a question of fact, must be tried by jury or inspection. *Dyer* 25. *Mo.* 4 *Pl.* 11. *Bro. Idiots.* *F. N. B.* 233.

There

There are, says lord Coke, four kinds of persons who may be said to be *non compos*: Non compos mentis are of four kinds. Ideots.

1. Ideots, who are of *non sane* memory from their birth, by a perpetual infirmity.

2. Who lose their memory and understanding by the visitation of God, as by sickness or other accident. Persons losing their memory by illness. Lunatics.

3. Lunatics, who have sometimes their understanding, and sometimes not.

4. Drunkards, who, by their own vicious act, for a time deprive themselves of their memory and understanding. Drunkards:

The last is so far from coming within the protection of the law, that his drunkenness is an aggravation of whatever he does amiss. *1 Inst. 24.*

Ideots and lunatics, being under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution. *1 Haw. 2.* Not punishable for crimes.

It seems to have been anciently holden, in respect of that high regard which the law has for the safety of the king's person, that a madman might be punished as a traitor for killing, or offering to kill the king; but this is now contradicted by better and later opinions: *Fitz. Coron. 351. 4 Co. 124. b. 1 Rol. Rep. 324.*

But if a person, wanting discretion, shall commit a trespass against the person on possession of another, he shall be compelled, in a civil action, to give satisfaction. *1 Haw. 2.* Though accountable for civil offences.

Drunkards, however, have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. *1 Inst. 247. 1 Haw. 2. 1 H. 32.* Drunkards have no indulgence.

If a person who has committed a capital offence, shall become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Pl. 10. 1 Haw. 2.* Becoming non compos before conviction.

By the common law, if a criminal on his trial has the appearance of being a lunatic, and it is doubtful whether he really is so or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if they shall find that the party only feigns himself mad, and he still refuses to answer, he shall be dealt with as if he had confessed the indictment. *1 Haw. 2.* How feigned lunacy shall be detected.

Any person who shall incite a madman to commit a murder or other crime, is a principal offender, and as much punishable as if he had done it himself. *1 Haw. 2.* Inciting a madman to commit a crime.

Any person may justify confining and beating his friend, being mad, in a manner which is proper in such circumstances. *1 Haw. 130.* A friend may confine him.

Lunatics and Ideots.

An ideot cannot bring an appeal. 1 *Haw.* 162.

Nor be an approver, as he cannot take the oath required, nor wage battle. 3 *Inst.*

Two justices may order a madman to be restrained.

The 17 G. 2. c. 5, enacts, That whereas there are sometimes persons, who, by lunacy or otherwise, are furiously mad, or so disordered in their senses that it may be dangerous to permit them to go abroad, it shall therefore be lawful for two or more justices, where any such person shall be found, by warrant directed to the constables, churchwardens, and overseers of the place, or some of them, to cause such person to be taken, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct; and if such justices find it necessary, to be there chained, if the settlement of such disordered person shall be within such county or precinct.

Or taken to his settlement.

And if his settlement shall not be there, he shall be sent to his settlement by a vagrant pass (*mutatismut andis*), and shall be locked up or chained, by warrant of two justices of the county or precinct to which such person is so sent.

M. 8 W. Hard's case. The court was moved to quash an order of justices for removing an ideot to the place of the last legal settlement of his father; the counsel who moved the court compared it to the case of a bastard, who is maintained by the parish where he is born. *Holt*, chief-justice: The father of an ideot ought to maintain him, and if he cannot, the parish or place where the father is settled must do it. There is no difference between an ideot and any other poor child. The case of a bastard differs, for this reason, because the bastard has no father, or rather none that the law considers as such. 2 *Salk.* 427.

Charges how defrayed.

And the reasonable charges of removing, keeping, maintaining, and curing such persons, during such restraint (which shall be during such time only as such madness shall continue), shall be paid (being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter-sessions: but if such person has not an estate to satisfy the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. *s. 20.*

But any person aggrieved by any act of such justices out

Lunatics and Ideots.

99

of sessions may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *f. 26.*

Nothing herein shall however restrain or abridge the power of the king, or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection. *f. 21.*

By the 14 G. 3. c. 49, (which was at first temporary, and by 26 G. 3. c. 91, made perpetual), No person, on pain of 500*l.* shall entertain or confine, in any house kept for the reception of lunatics, more than one lunatic at one time, without a licence, to be granted yearly by the college of physicians within *London* and *Westminster* and seven miles thereof and within the county of *Middlesex*, and elsewhere by the justices in sessions.

Houses for reception of lunatics to be licensed.

The king is the general guardian of ideots and lunatics. *17 Ed. 2. st. 1. c. 9, 10.*

King the guardian of lunatics.

The trial of ideocy, madness, or lunacy, in civil cases, and in order to the commitment or custody of the person and his estate, which belongs to the king, either to his own use and benefit, as in case of ideocy, or to the use of the party, in case of accidental madness or lunacy, is by writ or commission to the sheriff or escheator, or particular commissioners, both by their own inspection and by inquisition, to enquire, and return their inquisition into the Chancery; and thereupon a grant or commitment of the party and his estate ensues: and in case the party or his friends find themselves injured by the finding him a lunatic or ideot, a special writ may issue to bring the party before the chancellor, or before the king, to be inspected; and if, on examination, it appear the party is no ideot, the whole commission and office shall be discharged without any traverse or *monstrans de droit*. *9 Co. 31. a. 4 Co. 126.*

Method of trial of ideocy, madness, or lunacy, in civil cases.

A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. *4 Co. Beverly's case.*

Whether he may avoid his own act.

If an ideot, or a lunatic, not being in a lucid interval, takes a wife, the marriage is void; for consent is necessary to make a marriage effectual, and neither of them is capable of consenting to any thing. But, as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, it is provided by the 15 G. 2. c. 30, that the marriage of lunatics and persons under phrenzies (if found lunatics under a commission, or committed to the care of trustees by any act of parliament) before they are declared of sound mind by the lord chancellor or the majority of such trustees, shall be totally void. *1 Black. 438.*

Marriage of an ideot or lunatic is void.

Mayhem or Maim.

Whether he
may make a
will.

To make a will, it is not sufficient that the testator have memory to answer familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate with understanding and reason. 6 Co. 23.

Madder.

THE 31 G. 2. c. 35, enacts, That if any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots, and shall be convicted thereof before one justice, by confession or oath of one witness, he shall, for the first offence, pay to the owner such satisfaction for damages, and in such time, as the said justice shall appoint; and shall also pay upon the conviction, to the overseer for the use of the poor, any sum not exceeding 10s. as the justice shall think meet; and if he shall not make such recompence to the owner, and pay such sum to the use of the poor, such justice shall commit him to the house of correction for any time not exceeding one month, or may order him to be whipped by the constable or other officer, as to him shall seem meet. For the second offence, the justice shall commit him to the house of correction for three months.

§. 5.

Prosecution to be commenced within thirty days. §. 6.

Madmen. See LUNATICS.

Mayhem, or Maim.

Maim, what.

MAIM, from the French *mebaigne*, is such a hurt in any part of a man's body, as to render him less able in fighting, either to defend himself or annoy his adversary; such as the cutting off, disabling, or weakening a hand or finger, striking out an eye or foretooth, or castration, &c. and these are properly said to be maims, and to come under the notion of felonies; but the cutting off an ear or nose are said not to be properly maims, because they do not weaken a man, but only disfigure him. 3 Inst. 62, 118. 1 Haw. 111.

For

For the members of every subject are under the safeguard and protection of the law, that a man may be able to serve his king and country, when occasion shall be offered: therefore a person who maims himself, that he may have the better pretence to beg, may be indicted and fined. *1 Inst. 127.*

A man may be indicted for maiming himself.

By the old common law, castration was punished with death, and other maims with the loss of member for member; but afterwards no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. *1 Haw. 111, 112.*

Ancient punishments for maiming.

But now, by the statute 22 & 23 C. 2. c. 1, (usually called the *Coventry act*, because it was made on the occasion of sir *John Coventry's* being assaulted in the street, and his nose slit), it is enacted, That if any person shall, on purpose and of malice forethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before mentioned, such his majesty's subject; that then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to the offence as aforesaid, shall be and are by the said statute declared to be felons, and shall suffer death as in cases of felony without benefit of clergy. *s. 7.*

Maiming by the *Coventry act*.

Provided, that no attainder of such felony shall extend to corrupt the blood, or forfeit the dower of the wife, or the lands, goods, or chattels of the offender. *Id.*

If a man attacks another with an intent to murder him, and he does not murder but only maim him; the offence is nevertheless within the statute. *1 Haw. 112.* As in the following case:

Maiming, though with intent to kill, is within the statute.

Mr. Coke, a gentleman of *Suffolk*, and one *Woodburn*, a labourer, were indicted, in 8 G. *Coke* for hiring and abetting *Woodburn*, and *Woodburn* for the actual fact of slitting the nose of *Mr. Crispe*. The murder of *Crispe* was intended, and he was left for dead, being terribly hacked and disfigured with a hedge-bill; but he recovered. Now the bare intent to murder, is no felony: but to disfigure, with an intent to disfigure, is made so by this statute; on which they were therefore indicted. And *Coke* rested his defence upon this point, that the assault was not committed with an intent to disfigure, but with an intent to murder, and therefore not within the statute. But the court held, that if a man attack another to murder him with such an instrument as a hedge-bill, which cannot but endanger the disfiguring him; and in

Mayhem or Maim.

such attack happens not to kill, but only to disfigure him, he may be indicted on this statute: and it shall be left to the jury whether it was not a design to murder by disfiguring, and consequently a malicious intent to disfigure as well as to murder. Accordingly the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder. And they were both condemned at *Suffolk assizes*, and executed. 6 *St. Tri.* 211. 4 *Black.* 207.

What cut is a
maim
Barney Carroll's
case.

What kind of cut shall be considered as a maim, will appear from the following case: At the Old Bailey in *July* session 1765, *Barney Carroll* and *William King* were indicted before lord chief-baron *Parker*, on the 22 and 23 *C. 2. c. 1*, [*viz* the *Coventry* act above-mentioned]. *Cranly Thomas Kirby*, esq. the prosecutor had apprehended a young pickpocket, near *Somerfet-house* in the *Strand*: and, upon threatening to take him before a magistrate, the prisoner *Carroll*, who appeared to have been lurking under the side of the *New Church*, immediately came up, and followed the prosecutor while he was conducting the boy towards *Temple-bar*, walking sometimes before, and sometimes behind them, till they came to the top of *Arundel street*; when he struck the prosecutor a violent blow across the nose and eyes with a razor-bladed knife, saying "Damn you, sir, let the boy go!" And it was proved by an accomplice that four of them had that evening gone out to pick pockets, under an agreement to strike or stab, or cut the nose and eyes of any person who molested them. The wound bled profusely; and, upon examination, it appeared that the two great blood-vessels on *Mr. Kirby's* forehead were divided; that there was a large transverse wound across the nose, so wide open that the bone was visible. It began from the right, and went across the eye-lid, and across the nose: the two muscles of the nose were cut through. It proceeded to the left eye-lid, and terminated at the temple. A nerve was cut. It also appeared in evidence that in many old authors who have written on surgery, such wounds are called *slits*, but that *slit* is a word not made use of now. The word *slit* is understood as synonymous to that of *cut*; but the idea which was formerly conveyed by the word *slit*, is now expressed in speaking technically by the word *divided*. The jury found *Barney Carroll* guilty as principal, and *William King* as counselling, aiding, and abetting, the said *Barney Carroll*. But it was questioned, Whether such a cut was a *slitting* within the letter of the act, the wound not having perforated to the nostril. It was therefore referred to the consideration of the

twelve

twelve judges; and they were of opinion, that the offence described in the indictment was properly proved, and the conviction legal. Both the prisoners were executed. *Leach's Cas. in Cr. Law*, 59.

On an indictment of *maim*, on the 22 & 23 C. 2. c. 1, Construction of the malice and lying in wait may be collected from the circumstances, and need not be expressly proved. *Tickner's case* at the Old Bailey February session 1778.

But in the case of *William Lee*, who was tried on the *Coventy act*, at the Old Bailey July session 1763, before lord chief-baron *Parker*, it appeared in evidence, that the prisoner returned home one night, after his wife and two children were abed and asleep, and cut his wife's throat with an old razor which he had concealed in his stocking, making a wound about three inches in length, and quite across, but providentially it was not mortal. The court were of opinion that this was not a maiming, or laying in wait, within the 22 & 23 C. 2. c. 1, and the prisoner was accordingly acquitted.

Maiming of Cattle. See CATTLE.

Maintenance.

MAINTENANCE, in general, is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right. 2 *Inst.* 208, 212. 1 *Haw.* 249. Maintenance, what,

I. Of Maintenance in general.

II. Of Champarty.

III. Of Embracery.

I. Of Maintenance in general.

Maintenance is twofold: One in the country, as where a person assists another in his pretensions to certain lands, as taking or holding the possession of them for him by force or subtlety; or where one stirs up quarrels and suits in the country, in relation to matters wherein he has no concern. And this kind of maintenance is punishable at the king's suit by

Maintenance
in courts of
justice.

fine and imprisonment, whether the matter in dispute any way depended on plea or not; but it is said not to be actionable. *2 Inst.* 213. *1 Haw.* 249.

The other is maintenance in a court of justice, where a person officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise, in the prosecution or defence of any such suit. *2 Inst.* 212. *1 Haw.* 249.

Of this second kind of maintenance, there are three species:

First, where a person maintains another without any contract to have part of the thing in suit; which is generally called *maintenance*.

Champarty.

Secondly, where a person maintains one side, to have part of the thing in suit: this is called *champarty*.

Embracery.

Thirdly, where a person laboureth a jury, which is called *embracery*. *1 Haw.* 249.

It seems however agreed, that where a person claims a common interest in the same thing, as in a way, church-yard, or common, by the same title, they may maintain each other in a suit relating to the same. *1 Haw.* 252.

And that whoever is of kin, or related by any kind of affinity to the party, may lawfully stand by at the bar and counsel him, and pray another to be of counsel for him; but cannot lawfully lay out his money in the cause, unless he be either father or son, or heir-apparent to the party. *2 Inst.* 564. *1 Haw.* 252.

And any one may lawfully give money to a poor man, to enable him to carry on his suit. *1 Haw.* 253.

It is said, that not only he who assists another with money in his cause, as by retaining counsel for him; or otherwise bearing him out in the whole, or part of the expence, but also he who, by his friendship or interest saves him that expence, which otherwise he may be put to, is guilty of maintenance; as where a person persuades, or but endeavours to persuade, a man to be of counsel for another *gratis*. *2 Rol. Abr.* 118. *1 Haw.* 249.

Maintenance
how punishable
by common
law.

By the common law, all unlawful maintainers are not only liable to render damages in an action at the suit of the party grieved, but may also be indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as shall be proportioned to the circumstances of the offence. And it also seems, that a court of record may commit a man for an act of maintenance in the face of the court. *2 Inst.* 212. *1 Haw.* 255.

How punished
by statute 1 Ed.
3.

The 1 Ed. 3. st. 2. c. 14, enacts, That no person shall take

take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

And by the 20 *Ed. 3. c. 4.*, it is enacted, That none shall take in hand quarrels other than their own, nor the same maintain, by them or by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law and hindrance of right. By 20 *Ed. 3.*

And by the 1 *R. 2. c. 4.*, No person whatsoever shall take or sustain any quarrel by maintenance in the country or elsewhere, on grievous pain: that is to say, the king's counselors and great officers on a pain that shall be ordained by the king himself, by the advice of the lords of this realm; and other officers of the king, on pain to lose their offices, and to be imprisoned and ransomed at the king's will; and all other persons on pain of imprisonment and ransom at the king's will. By 1 *R. 2.*

Also by the 32 *H. 8. c. 9.*, it is enacted, That no person shall unlawfully maintain, or procure any unlawful maintenance in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea, to the disturbance or hinderance of justice, on pain of 10*l.*; half to the king, and half to him who shall sue within one year. By 32 *H. 8.*

In an information on this statute of 32 *H. 8.*, It is not sufficient to say that the defendant maintained the party, without adding that he did it unlawfully; neither is it sufficient to say that a bill was exhibited, without farther shewing that a plea was depending. 1 *Haw. 256.*

It has been adjudged that maintenance of a suit in a spiritual court, is not within this or any other statute concerning maintenance. 1 *Haw. 256.*

He who fears that another will maintain his adversary, may, by way of prevention, have an original grounded on these statutes, prohibiting him to do it. *Id.*

II. Of Champarty.

Champarty, from *champ*, French, and *parti*, is the unlawful maintenance of a suit, in consideration of some bargain to what have part of the lands or thing in dispute, or part of the gains.

1 *Haw. 156.* 33 *Ed. 1. st. 2.*

But, though every champarty is maintenance, every maintenance is not champarty. Champarty is but a species of maintenance, which is the genus. 2 *Inst. 208.*

Champarty is punishable at common law in the manner expressed How punishable
by common law.

expressed in treating of maintenance in general. 2 *Inst.* 282.

And by the following statutes: *viz.*

By statute 3 Ed. 1.

The 3 *Ed.* 1. c. 5. §. 25, enacts, That no officer of the king, by himself nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.

Covenant, in this statute, is understood to be an agreement either by word or writing; for, though a covenant is usually taken for an agreement in writing, yet in a larger sense (as it is here) it is taken for an agreement by writing or by word. 2 *Inst.* 209.

By 28 Ed. 1.

And by the 28 *Ed.* 1. c. 11, it is enacted, That no person, to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he hath purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.

By 33 Ed. 1.

And by the 33 *Ed.* 1. §. 3, If any person shall take for maintenance, or the like bargain, any suit or plea against another; he, and they who consent thereunto, shall be imprisoned three years, and make fine at the king's pleasure.

By 1 R. 2.

Further by the 1 *R.* 2. c. 9, A feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors, with double damages, without having any regard to such alienations.

For further particulars on this head, see title *Champarty*.

III. Of Embracery.

Any attempt to corrupt, influence, or instruct a jury, or any way to incline them to be more favourable to one side than the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether such verdict given be true or false. 1 *Haw.* 259.

So much does the law abhor all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with; therefore it will not suffer a mere stranger so much as to labour

bour a juror to appear and act according to his conscience.

1 *Haw.* 259.

Offences of this kind subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260.

The 32 *H.* 8. c. 9, enacts, That no person shall embrace any jurors, on pain of 10*l*; half to the king, and half to him that shall sue within a year. *f.* 3, 6.

And by the 38 *Ed.* 3. *st.* 1. c. 12, it is enacted, That if any juror shall take any thing to give his verdict, both he and the embracer shall forfeit ten times as much; half to the king, and half to him who shall sue.

Punishable by the common law.

By statute 32 *H.* 8.

By 38 *Ed.* 3.

Malt.

BY the 24 *G.* 3. c. 41. *sess.* 2, Every maltster, or maker of malt for sale, shall annually take out a licence from the office of excise, and pay for the same 5*s.* if the quantity of malt made by him, shall not exceed within the year, ending June 23, in each year, previous to his taking out such licence, the quantity of

Maltsters to take out an annual licence.

		50 quarters	£.	s.	d.
If above 50 quarters, and under 100			0	10	0
If above 100 and under 150			0	15	0
If above 150 and under 200			1	0	0
If above 200 and under 250			1	5	0
If above 250 and under 300			1	10	0
If above 300 and under 350			1	15	0
If above 350 and under 400			2	0	0
If above 400 and under 450			2	5	0
If above 450 and under 500			2	10	0
If above 500 and under 550			2	15	0
If above 550			3	0	0

And every person who shall, after June 25, 1784, first become a maltster, shall previously take out a licence and pay 5*s.*; and at the end of every year afterwards shall pay such further additional duty herein before charged, according to the quantity of malt made by him the preceeding year. And every such person who shall neglect to take out such licence, and renew the same annually, ten days at least before the end of the year, shall forfeit 10*l.* *f.* 1, 7.

And pay additional duty at the end of every year.

Persons

Persons in partnership need only take out one licence for one house. *f. 8.*

No malt to be imported.

By the 12 *Ann. st. 1. c. 2.* it is enacted, That no malt shall be imported, on pain of forfeiting the same, and the value thereof. *f. 26.*

Duty on malt.

And by the 17 *G. 3. c. 13.* For every bushel of malt made in *England* from barley or other grain, shall be paid by the maker a duty of

£. s. d.

0 0 9³/₄

Malt brought from Scotland.

For every bushel made in *Scotland* - 0 0 4¹/₂ ¹/₂

And for every bushel of malt brought from *Scotland* to *England*, with a certificate from the officer that it has paid the said duty of 4¹/₂ ¹/₂, and been entered as directed by 33 *G. 2.* shall be paid a duty of

0 0 4¹/₂ ¹/₂

And if brought from *Scotland* to *England* without such certificate as aforesaid, shall be paid

0 0 9³/₄

And if malt is brought in from *Scotland* by sea, it shall be entered at the port of landing, and pay the same duty as *English* malt, unless a certificate is produced that it has paid the duty of 4¹/₂ ¹/₂ *d.* a bushel in *Scotland*, and then it shall only pay ¹/₄ ¹/₂ *d.* more, to make it equal with the *English*; and if brought by land, it shall be carried through *Berwick* or *Carlisle*, and there pay in like manner, on pain of forfeiting the malt or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry or payment, the officers of excise may seize it. 33 *G. 2. c. 7. f. 10.* 1 *G. 3. c. 3. f. 6.* 27 *G. c. 13. Sched. F.*

Under whose management.

By the 12 *Ann. st. 1. c. 2. f. 3.* The said duty shall be under the management of the commissioners and officers of excise.

And by the same statute, *f. 36.* No person making malt (except compounders) shall set up, alter, or use any cistern, uting fat, utensil, or other vessel, for wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping malt, without first giving notice in writing at the next excise-office; or shall keep or use any private cistern or other vessel for wetting his barley or corn, other than such as are known and made use of in his common malting-house; on pain of 50*l.*

Measure.

Officer shall be permitted to enter and survey.

The same statute, *f. 7.* also enacts, That every round bushel with a plain bottom, 18¹/₂ inches wide throughout, and eight inches deep, shall be deemed a legal *Winchester* bushel; The officer, in the day-time, shall be permitted, on request, to enter the malthouse, and all other places belonging

to or used by any maker of malt (either for sale or not for sale), and to gauge all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and he shall make return thereof to the commissioners, or whom they shall appoint, leaving a copy with such maltster; and any maltster refusing to permit such officer, shall forfeit 20*l.* *s.* 4.

And by a general clause in the 1 *G. st. 2. c. 2*, Any maker of malt for sale, who shall obstruct any officer of excise in the execution of any of the powers given him for securing the said duties, shall forfeit 10*l.* *s.* 4. Obstructing officer.

And the officers shall measure corn making into malt, by the gauge only, and not by the bushel. 12 *Ann. st. c. 2.* Corn to be gauged.
s. 17.

If the officer shall refuse or neglect to leave a copy of the gauge for the maker, at the time of taking the gauge, he shall forfeit 40*s.* *s.* 31. Officer to leave a copy of the gauge.

But demand shall be first made in writing. 12 *G. c. 28.*
s. 30.

And by section 34 of the 12 *Ann. st. 1. c. 2*, The officer shall, on request, be permitted, by night or by day (having a constable with him by night) to enter the house, malthouse, or other place belonging to or made use of by any maker of malt for sale, common brewer, innkeeper, victualler, distiller, or vinegar-maker, making malt, to gauge and take an account of the corn wetting or wetted; and any such maker refusing to permit him shall forfeit 20*l.* Officer may enter by night or by day, malt-houses and other places.

It is enacted by the 2 & 3 *Ed. 6. c. 10*, That no person shall make any barley-malt (except in *June*, *July*, and *August*,) but that the same shall have in making thereof, that is in the fat, floor, steeping, and drying, three weeks at least; nor in *June*, *July*, and *August*, but that it shall have seventeen days at the least (unless it be for his own house); on pain of forfeiting 2*s.* for every quarter; half to the king, and half to him who shall sue; and the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment of twelve men, as by accusation or information of two honest witnesses. *s.* 2, 3, 4. When malt shall be made.

And by the same statute, *s.* 2, 3, 4, 5, No person (except for his own house), shall mingle any malt not well made, or made of mow-burnt or spired barely, with other good malt, and afterwards put the same to sale, on pain to forfeit 2*s.* for every quarter; half to the king, and half to him who shall sue in like manner in the sessions or leet. Mixing malt.

And any person who shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently Selling malt not well dressed.

niently fanned half a peck of dust or more out of one quarter, shall forfeit 20*d.* for every quarter; half to the king, and half to him who shall sue in like manner in the sessions or leet. *Id.* *f.* 3, 4.

Bailiffs and constables may examine malt.

The bailiffs and constables of the town, where malt shall be made or put to sale, may search the same; and if it shall appear to be evil made, or mingled with evil malt, they shall, with the advice of one justice, cause it to be sold to such persons, and at such reasonable prices, under the common market-price, as to him shall seem expedient. *Id.*

f. 4.

Mixing malt with unmalted corn.

By the 1 G. 2. c. 2, If any dealer in malt shall fraudulently mix with malt any unmalted corn, or sell or expose to sale any such mixture, or shall attempt to ship off any such mixture, in order to export it, he shall forfeit 5*s.* a bushel. *f.* 13.

Not to mix corn with that of a former wetting.

And by the 2 G. c. 1. *f.* 11, No maker of malt (except compounders) shall mix corn of one wetting with that of a former wetting; or mix any of his couches or floors with corn of a former wetting, before the same is put on the kiln for drying, on pain of 5*s.* a bushel.

Penalty on pressing malt in the cistern.

The 1 G. 3. c. 3, enacts, That if any corn in any cistern, uting fat, or couch, steeping, or steeped, in order to be made into malt by any maltster (other than a compounder) shall be found so hard, close, and compact, as it could not be, if it had not been forced together to prevent its swelling; every maltster and maker of malt (except compounders) where the same shall be found, shall forfeit 5*s.* a bushel.

f. 17.

Concealing malt,

Any maker of malt who shall fraudulently conceal any malt from the view of the gauger, shall forfeit 10*s.* a bushel. 12 Ann. *st.* 1. c. 2. *f.* 35.

Mixing malt, gauged with what is ungauged.

By the 1 G. 3. c. 3, If any maker of malt shall fraudulently convey, or cause or suffer to be conveyed away from the cistern, uting-fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt; and shall mix the same with any couch or floor of other corn making into malt, which is then depending and in operation, and which has been gauged or charged with the duty in the couch, he shall forfeit 100*l.* *f.* 18.

Preventing a gauge to be taken of malt in the couch.

And by the same statute and section, Any maltster who shall fraudulently convey, or cause or suffer to be conveyed away from the cistern, uting fat, or other wetting-place or utensil, any steeping or part of any steeping of corn making into malt, so that no gauge thereof can be taken in the couch by the officer, shall forfeit 100*l.*

By

By the 12 *Ann. st. 1. c. 2*, Out of every twenty bushels charged by the gauger, an allowance shall be made of malt swelling. malt charged in the uting fat, cistern, or other vessel, wherein it shall be found wetting or steeping, or on the floor, within thirty hours after it shall be thrown out of such vessel, of four bushels, for the difference between the quantity when it is wet and swoln, and when it is converted into dry malt. *f. 20.*

And by the same statute, *f. 28*, If any corn that has been steeped be found working or growing on the floor before it is put on the kiln, which when dried will not answer so great a quantity from the floor as from the cistern; out of every twenty bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gauged upon the floor, after it has been thrown out of the cistern thirty hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dried.

But by the 33 *G. 2. c. 7*, Any maltster who shall not wet or steep his barley or other corn, in the cistern, uting-fat, or other vessel, so as it be covered with water, and continue so covered, for forty hours before he take the water from it, shall not be entitled to the said allowance of four bushels in every twenty as aforesaid. *f. 64.*

And the 3 *G. 3. c. 13*, enacts, That, to ascertain when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping; the maltster, within a city or market town, shall give twenty-four hours, elsewhere forty-eight hours notice in writing to the officer, of the hour or time when he intends to wet corn or grain to be made into malt: and if he shall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within three hours after, the notice shall be void; and he shall give a fresh notice before he shall begin. And he shall not begin, but between four in the morning, and nine in the evening. And if he shall not give such notice; or having begun to wet such corn, shall not immediately proceed to cover the whole with water, and continue it covered for forty hours; or begin to wet any but between four in the morning and nine in the evening; or after the officer has taken account of the corn steeping, shall add any fresh corn or grain; he shall forfeit 100*l.* 3 *G. 3. c. 13.*

The maltster shall make entry monthly at the office of excise, of all the malt made (either for sale or not) in such month; on pain of 10*l.* 12 *Ann. st. 1. c. 2. f. 4.*

And

Payment of the duty.

And such maltster shall, within four months after entry, pay off the duties, on pain of forfeiting double; and after such default, he shall not sell or carry out any malt until the duty is paid, on pain of double value. 12 Ann. st. 1. c. 2. s. 6. 1 G. st. 2. c. 2. s. 8.

Drawback for malt destroyed or perished.

By the 12 Ann. st. 1. c. 2, After the duty is paid, if any malt shall be destroyed by fire, by burning of the place where it is kept; or perish by water by the casting away of the vessel in which it is transported; the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter-sessions where such accident shall happen; who shall grant a certificate of such loss, on producing which the duty shall be repaid. s. 27.

Drawback of the duty for malt damaged.

By the same statute s. 14, After the duty is paid, if any quantity shall be damaged by the sinking of a vessel in which malt shall be transported from one part of the kingdom to another; the justices shall, at the next sessions, on proof of such damage, and of the payment of the duty, estimate the damage, and the allowance to be made, and give a certificate of the sum allowed, which shall bear the proportion to the whole duty, as the damage shall bear to the value of the malt: and on producing such certificate, the officer shall repay or allow to the proprietor the sum certified. 12 Ann. st. 1. c. 2. s. 14.

But where such loss shall happen, the person who shall sustain it shall, three days before the next sessions, leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the said sessions. s. 15.

Compounding for the duties.

The officers were authorised by several acts to compound for the duties on malt to be consumed in private families at 7s. 6d. a head for the year; but this having occasioned great frauds, this power is abolished by 23 G. 3. c. 64.

Exportation.

Malt entered and made for exportation only, shall not be liable to the duties; but no drawback shall be allowed for any malt exported. 12 G. c. 4. s. 48. 33 G. 2. c. 7. s. 14.

But the maker of malt shall be allowed, in consideration of his extraordinary expence and trouble, 3d. for every quarter made for exportation. 12 G. c. 4. s. 59. 27 G. 3. c. 13. Sched. (F).

And by the 1 G. 3. c. 3, For every twenty quarters of grain made into malt for exportation, thirty quarters of malt shall be allowed, and no more, on exportation, though by steeping it shall run out into any greater quantity. s. 9.

And

And by the 12 G. c. 4, The maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50/; and such corn shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5s. a bushel. *f. 49, 58.*

Notice to be given before wetting.

And during the steeping of the corn so intended for exportation, and till it be dried and locked up, the officers may gauge and take an account thereof in all its operations, as if the duties were to be charged thereon. 12 G. c. 4. *f. 52.*

Officers to take account of such corn in all its operations.

And no maltster, or maker of malt, shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up; on pain of 5s. a bushel. *Id. f. 50.*

When to begin wetting for exportation.

And the maltster shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when it shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, till it has been measured in presence of the officer; on pain of 50/. 3 G. 2. c. 7. *f. 16.*

Malt for exportation to be of one steeping.

Persons opposing the officers in the execution of this act, shall forfeit 50/. 12 G. c. 4. *f. 58.*

Opposing officers.

And the said maker of malt shall give notice in writing to the officer, or leave notice at the next excise-office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and, after it has been measured, it shall (on pain of 50/.) be immediately carried on ship-board, or else into storehouses, provided by such maker, to be there kept apart from all other malt, under two locks, one provided by the proprietor, and the other by the officer, at the expence of the proprietor, whereof one key shall be kept by the proprietor, and the other by the officer, till it be delivered out for exportation. 12 G. c. 4. *f. 51, 58.* 3 G. 2. c. 7. *f. 17.*

Notice to be given of malt being taken off the kiln.

And if the maltster, or any person with his privity, shall open such lock, or make any other entrance into the place, or carry any of it away, without the consent of the officer, or notice given to him, he shall forfeit 100/. 3 G. 2. c. 7. *f. 18.*

Persons who intend to ship malt for exportation, shall give at least forty-eight hours notice to the officer of the port, in writing, before they begin to put in on board, of

Forty-eight hours notice of shipping to be given.

Taking malt
from the joint
warehouse for
exportation.

Officer to take
an account of
what is de-
livered out.

Hatches of the
ship to be kept
locked.

Exporting
ground malt.

Penalties how
recovered.

the hour when such shipping is intended to be begun, and the name of the ship, on pain of 5s. a bushel. 12 G. c. 4. f. 57.

When any maker, or proprietor of malt, shall choose to take away any of it for exportation, and shall thereof give notice in writing to the officer, forty hours before the time he shall desire to take it out, expressing therein the quantity of the malt, and the port to which it is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. f. 53.

And he shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give him a certificate to the officer of the division to which it is intended to be removed. who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50l. 12 G. c. 4. f. 54.

And by the same statute, f. 56, During the shipping, at such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked, with two locks at each hatch, one provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded, till they are ready to sail.

And any person who shall break open the hatches of any ship so locked up, shall forfeit 50l. 12 G. c. 4. f. 58.

And the officers may not only attend the measuring of such malt, but continue on board the ship till she be cleared of their ports. *Id.* f. 55.

And if such malt shall be relanded, after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, it shall be forfeited and treble the value. 1 G. 3. c. 3. f. 11.

And the maltster, or maker of malt, who shall use any such storehouse for keeping of malt for exportation, shall, every nine months after the last clearing, clear out the same, on pain of 50l. 3 G. 2. c. 7. f. 20. Or 5s. a bushel. 12 G. c. 4. f. 57. And by the 1 G. 3. c. 3, he shall clear out in fifteen months, on pain of 50l. f. 15, 16.

If any unmalted oats or barley shall be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5s. a bushel. 6 G. c. 21. f. 4.

Should any ground malt be exported, it shall be computed at so many bushels as it contained before it was ground. 12 Ann. st. 1. c. 2. f. 30.

The penalties relating to this article (where not otherwise directed) shall be sued for, levied, and mitigated, as by the

the laws of excise, or in the courts at *Westminster*; half to the king, and half to him who shall sue. 12 Ann. st. 1. c. 2. f. 9. 24 G. 2. c. 40. f. 33.

Persons who think themselves aggrieved by any judgment Appeal of the justices, may appeal to the next quarter-sessions, giving six days notice in writing; but when there are not six days between the order of the justices and the sessions, the appeal may be at the second sessions. 2 Ann. st. 1. c. 2. f. 37, 38. 1 G. 2 st. 2. c. 16. f. 3.

And by 12 Ann. st. 1. c. 2; The sessions may award costs Sessions may to either party, to be levied by warrant of the justices, or award costs. two of them, on the goods of the party.

No *certiorari* shall be allowed, to set aside any order of the justices. 12 Ann. st. 1. c. 2. f. 37. No *certiorari* allowed.

And by the same statute, f. 10, All malt, in the custody Malt in custody of the maltster or maker, shall be liable to the duties and liable to the duties, penalties, in the same manner as if he were the lawful owner, &c.

Man (Island of).

PURSUANT to the act of the 5 G. 3. c. 26, and in Purchase of the consideration of the sum of 70,000*l.* paid to John duke the Duke of Man. of Athol, and Charlotte his wife, baroness Strange, the island, castle, pale, and lordship of Man, with all the islands and lordships thereunto appertaining, and all rights, jurisdictions, and interests in and over the same, are vested unalienably in the crown; reserving, nevertheless, to the said duke and duchess their landed property, with all their rights in and over the soil as lords of the manor; with all courts-baron, rents, services, and other incidents to such courts belonging, wastes, commons, and other lands, inland waters, fisheries, mills, mines, minerals, quarries, waifs, estravs, deodands, wrecks; together with the patronage of the bishopric, and of the other ecclesiastical benefices to which, at the time of the said purchase, they were entitled.

Several regulations have since been made, by different statutes, respecting the trade and manufactures of this island, and for preventing the clandestine exportation of goods into this kingdom; a grievance which this purchase was principally intended to remedy, viz.

By the 5 G. 3. c. 39, The officers of the customs and Subject to the laws of customs and excise. excise, are authorised to search ships and vessels, in any harbour,

bour, or other place, belonging to the *Isle of Man*; and to seize contraband goods there, as they may do in *Great-Britain*.

Duty of goods
imported in the
Isle of Man.

And, to defray the expences of government, the former duties upon importation and exportation shall cease, instead of which other duties are imposed: viz. For every gallon of *British* spirits, imported from *England*, shall be paid 1s; of rum 2s; pound of bohea tea 1s; green tea 1s. 6d; coffee 9d; tobacco 3d; hemp, iron, deal-boards, and timber imported from foreign parts, 10l. per cent. ad valorem; ton of *French* wine 8l; all other sorts of wine 4l. 7 G. 3. c. 45. 20 G. 3. c. 42.

What may be
imported duty
free.

By the 7 G. 3. c. 45, Flax, or flax-seed, raw or brown linen yarn, wood-ashes, and weed-ashes, fish and flesh of all sorts, and every sort of corn and grain, may be imported duty free from any place, *Great-Britain* only excepted; and from *Great-Britain* or *Ireland*, any white or brown linen cloth, hemp, or hemp-seed, horses and black-cattle, utensils for manufacture, fisheries, or agriculture, bricks and tiles, young trees, sea-shells, lime, soapers waste, packthread, and small cordage for nets; and from *Great-Britain*, salt, boards, timber, hoops, iron in rods or bars, cotton, indico, naval stores, and all sorts of wood called lumber.

Restrictions re-
specting the
quantity of
goods to be im-
ported.

And the commissioners of the customs may grant licences (which shall continue in force thirty days) to export from *England*, into the port of *Douglas* only, not exceeding 40,000 gallons of *British* spirits, 30,000 gallons of rum, (and from *Scotland* 10,000 gallons of rum) 20,000 pounds weight of bohea tea, 5000 pounds weight of green tea, 5000 pounds weight of coffee, and 12,000 pounds weight of tobacco, in one year. 7 G. 3. c. 45. 20 G. 3. c. 42.

Goods exported
duty free, with
some excep-
tions.

By the 5 G. 3. c. 43, The inhabitants of the *Isle of Man* may export into *Great-Britain*, bestials, or any goods of the produce and manufacture of the island (except as above excepted, and also except woollen manufactures, beer, and ale); without paying any duty for the same, other than is paid for the like in *Great-Britain*. But this shall not extend to give liberty to import into *Great-Britain* from the said island, any goods of the growth or produce of any foreign nation; except linen manufactures made there of hemp or flax, not being the produce of the said island. And the bounties on exportation of *British* and *Irish* linens, shall be allowed on the like species of linen made in the *Isle of Man*, imported into and exported from *Great-Britain*.

No spirits shall be exported from the *Isle of Man*, nor carried coastwise there, in any ship or vessel less than 100 tons burden, nor in any cask under sixty gallons (except for the use of seamen, not exceeding two gallons each); and no wine shall be there imported or carried coastwise, in any ship less than one hundred tons burden (except herring vessels trading to *Madeira* and the *Mediterranean*, of not less than seventy tons, 20 G. 3. c. 42.) nor in any cask less than twenty-five gallons; on pain of forfeiture of the goods and vessel. 5 G. 3. c. 39. Limitation of the size of vessels.

And by the 7 G. 3. c. 45, it is enacted, That no tea, brandy, strong waters or spirits, coffee, chocolate, tobacco, glass, coals, silks, or salt, shall be exported from the *Isle of Man*, on pain of forfeiture, together with the vessel. And no live sheep, wool, wollen or bay yarn, shall be exported, except to *Great-Britain*. Goods prohibited from exportation.

And no distillery of low wines shall be carried on in the *Isle of Man*, on pain of 200*l.* with the materials and utensils. *Id.* Distillery prohibited.

Mandamus.

MANDAMUS is a writ commanding the execution of an act, where otherwise justice would be obstructed, or the king's charter neglected, issuing regularly only in cases relating to the public and the government; and is therefore termed a prerogative writ, being grantable only where the public justice of the nation is concerned. 3 *Bac. Abr.* 527. 4 *Mod.* 281. Mandamus, what.

This general jurisdiction and superintendancy is now only exercised by the court of King's Bench, as the supreme court, of restraining and keeping all inferior courts and magistrates within their proper bounds, and obliging them to execute that justice with which they are invested. 3 *Bac. Abr.* 540. Issuing out of the King's Bench.

This writ may be issued in some cases where the injured party has also another (but more tedious) method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party has a right to have any thing done, and has no other specific means of compelling its performance.

A day is usually given to shew cause before this writ is granted.

But, though it is a writ of right, the court seldom grants it without giving the party, to whom it is prayed, a day to shew cause against it: and such matter must be laid before the court, by which it may appear that the party is entitled to it: therefore on a motion for a *mandamus* to restore the register of the blacksmiths' company, the court refused it, because they did not produce their charter, or a copy of it, with an affidavit; for, this being a private corporation, they held they could not take notice thereof, as the will of a town, &c. without such previous information. 3 *Bac. Abr.* 528. *M. 4 G. 2.*

This writ is grounded on on a suggestion, by the oath of the party injured, of his own right, and of the denial of justice by the court or person complained of; therefore, to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases where the probable ground is manifest), directing the party complained of, to shew cause why a writ of *mandamus* should not issue. And if he shews no sufficient cause, the writ itself is issued, at first in the alternative, either to do this, or give some reason to the contrary. To which a return or answer must be made at a certain day.

But though the court of King's Bench is intrusted with the jurisdiction of issuing out *mandamuses*, yet they are not obliged to do so in all cases wherein it may seem proper, but may exercise a discretionary power, as well in refusing as granting such writ; as in the following case:

The court refused a *mandamus* to restore a dissenting minister.

H. 30 G. 3. K. v. Jotham and others. Gibbs applied on a former day for a *mandamus* to these persons, who were trustees of a dissenting meeting-house at Bradford, in Wilts, called the *Particular Baptists*, to restore John Lloyd to the office of minister of the congregation, and to the use of the pulpit. This application was founded on the affidavits of Lloyd and Jotham, stating that, in July 1787, Lloyd received an invitation from twenty-seven persons of this meeting on behalf of the whole congregation to accept the office of minister; in consequence of which he procured his dismissal from another meeting of the same sect in Devonshire, and in December following publicly addressed the congregation at Bradford, and signified his acceptance of the office; and that he had continued to officiate there as minister from that time till November last, when he received a paper from some part of the congregation purporting to be a dismissal of him; that since that time the doors have been shut against him; and that he has been prevented from performing the functions of his ministry, although he has offered to answer any

any charges that can be brought against him. They further stated that there was an endowment for the minister for the time being of this meeting-house, and that these defendants were trustees for receiving the rents and profits &c. for that purpose. And *Lloyd* further deposed, that when he took upon him the office of minister, he conceived that the congregation could not remove him without his consent, unless he should misbehave himself, but that the appointment was for life; and that such was the understanding of other dissenting ministers of the same communion. *Bearcroft*, *Erskine*, and *Jekyll*, shewed cause, and stated from their affidavits that *Lloyd* had behaved himself with great impropriety and profaneness, and had made his pulpit the vehicle of personal slander on many of the congregation; in consequence of which a special meeting was held, when fifty-five of the congregation, [which in the whole consisted of less than one hundred members] agreed upon his dismissal, which was signified to him accordingly; and they stated an instance forty-three years ago of a minister being dismissed from this meeting-house for immoral conduct. The affidavits further stated, that *Lloyd* had not obtained a proper license as required by the act of parliament; and that amongst that sect it is held to be absolutely necessary, after a minister hath been chosen that he should be ordained by the ministers of the Baptist church, who meet once a year for that and other purposes, with which form *Lloyd* had never complied after his election. This latter circumstance was insisted on by counsel as a defect in *Lloyd's* title. And they also objected to the issuing of this *mandamus*, on the ground that *Lloyd* had not stated in his affidavit that he had complied with the several regulations of the toleration-act, by which dissenting ministers are required to subscribe the declaration therein contained, and such of the thirty-nine articles as they do not dissent from. *Gibbs* in support of the rule, contended that it was not necessary in an application for a *mandamus* to state with so much precision that all these forms had been gone through: it was sufficient to state generally the title of the party making the application, and the wrong for which he seeks redress. Now the party states his election, and that he considered it as an appointment for life; but if there be any doubt, the court will give him an opportunity of trying the right, which the congregation claim, to dispossess him in the manner stated in the affidavits. In the case of *Rex v. Barker*, no other ground was laid for the *mandamus* but an affidavit of the endowment of the pastorate, and the election of the claimant by a majority in

whom the right to elect was vested, and who was removed from the possession by the trustees; and there the court granted the *mandamus*. Lord Kenyon, Ch. J. There is no doubt but that a *mandamus* lies in these cases, where there is an endowment, if a proper case be made out. But it is necessary for a party applying for a *mandamus* to be restored to any office to make out a *prima facie* title to such office, and shew at least that he has complied with all the forms necessary to constitute his right. Here it does not appear that the party applying has gone through all those ceremonies which the particular sect of which he is a member has made necessary. His lordship also seemed to think that the party applying should have shewn his compliance with the requisites of the toleration act. *Ashburst*, J. thought the application not sufficiently founded: and that it was not enough for the complainant to state his supposition that he was elected for life; he ought to have shewn the grounds of it. And in opposition to this, the other party has shewn an instance in which the congregation exercised the right of removing the minister. *Buller*, J. *The King v. Barker* was the case of a *mandamus* to admit: and there is a great deal of difference between that and a *mandamus* to restore. The former is granted merely to enable the party to try his right, without which he would be left without any legal remedy. But the court have always looked much more strictly to the right of the party applying for a *mandamus* to be restored. In these cases he must shew a *prima facie* title; for if he has been before regularly admitted, he may try his right by bringing an action for money had and received for the profits. Therefore in order to entitle himself to this extraordinary remedy, he must lay such facts before the court as will warrant them in presuming that the right is in him; whereas here no facts have been stated to shew the ground of his title. Therefore I am clearly of opinion that this *mandamus* ought not to be granted. *Grose*, J. of the same opinion. Rule discharged. 3 *Durnf. and East*. 575.

A peremptory
mandamus.

If the inferior judge, or other person to whom the writ of *mandamus* is directed, returns, or signifies an insufficient reason, then there issues in the second place a peremptory *mandamus* to do the thing absolutely: to which no other return will be admitted, than a certificate of perfect obedience and due execution of the writ.

Punishment for
disobedience.

An inferior judge or other person, making no return, or failing in his respect and obedience, is punishable for his contempt by attachment.

But

But should he at first return a sufficient cause, though it should be false in fact, the court of King's Bench will not try the truth of the fact upon affidavits; but will for the present proceed no further in the *mandamus*. But the party injured may then have an action against him for his false return, and (if the jury find it to be false), shall recover damages equivalent to the injury sustained, and also a peremptory *mandamus* to the defendant to do his duty. 3 Blackst. 110.

T. 33 & 34 G. 2. *Crawford v. Powell*. This was a case reserved at *nisi prius* before lord Mansfield at Guildhall on the trial of an action for a false return to a *mandamus*. The *mandamus* was directed to G. P. commanding him to deliver to G. C. the common seal, books, papers, and records of the corporation of *Harwich*, which the said C. claimed to belong to his custody, as having been duly elected town-clerk of that corporation; to this writ of *mandamus*, (to deliver the *insignia*, &c.) the defendant G. P. returned, "that the said G. C. was not duly elected town-clerk:" on which return, alledged to be a false one, the foregoing action was brought. On this case being argued before the court, the matter contended for was, that it was incumbent on the plaintiff to shew that he was duly elected, which he could not be, unless he had taken the sacrament within the year, according to *stat. 2 C. 2.* and *13 C. 2.* After hearing the arguments of the counsel on both sides, the court gave judgment for the plaintiff. Lord Mansfield: Since *stat. 5 G. 1. c. 6*, the election of a person who has not taken the sacrament within a year next preceding it, is not void, but only voidable in case of a removal or prosecution within the time limited; and consequently, as here was no such removal or prosecution within that limited time, the plaintiff's election stood confirmed, and became absolute. It is not like the case of *Tufts v. Nevinsan* in lord Raymond's Reports; because that arose on the officer's bringing a *mandamus* to swear him into his office, being then out of possession; whereas this plaintiff is in possession of the office, and only brings his *mandamus* for the *insignia*, and other things belonging to it. By the court: Let judgment go for the plaintiff. *Burr, Mansf. 1013.*

Manlaughter. See HOMICIDE.

Marriage. See BARON and FEME.

Master. See SERVANT, and APPRENTICE.

Mead. See ALEHOUSES.

MEASURES. See WEIGHTS and MEASURES.

Medicines.

Annual licence
to be taken out.

THE 25 G. 3. c. 79, enacts, That every person uttering or vending any drugs, oils, waters, essences, powders, tinctures, or other preparations or compositions whatsoever, used externally or internally as medicines for the body, subject to the duties hereafter mentioned, shall take out a licence from the stamp-office; for which shall be paid, if in *London* or within the limits of the penny-post, 20s; elsewhere 5s. And such licence shall be renewed annually, ten days at least before the end of the year. *f.* 5, 6, 7.

Penalty on selling
without
such licence.

And any person who shall sell, or expose to sale any such medicines, without having such licence, shall forfeit 5*l.* *f.* 8.

Also on every packet, box, bottle, phial, or other inclosure, containing any such medicines to be used at aforesaid, which shall be uttered or vended, shall be charged a stamp-duty, as follows; viz.

Duty on medicines.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Where the contents shall not exceed the value of 1 <i>s.</i> shall be charged a duty of	-	0	1½
Above 1 <i>s.</i> and not exceeding 2 <i>s.</i> 6 <i>d.</i>	-	0	3
Above 2 <i>s.</i> 6 <i>d.</i> and under 5 <i>s.</i>	-	0	6
Of the value of 5 <i>s.</i> and upwards	-	0	1 0

And the said duties shall be under the management of the commissioners of the stamp-duties. *f.* 6.

Exceptions.

But the same shall not extend to any drugs made or contained in any of the books of rates; that is to say, the book of rates subscribed by Sir *Harbottle Grimstone*, baronet, and referred to by 12 G. c. 2. c. 4; and an additional book of rates signed by the right hon. *Spencer Compton*, and referred by 11 G. c. 7. Nor to any medicinal drug to be sold entire, without any mixture or composition with any other drug or ingredient, by any surgeon, apothecary, chemist, or druggist, who has served a regular apprenticeship; or who has served as a surgeon in the navy or army, or by any other person licensed as aforesaid: but all such drugs may be vended by any such person, freed from such duties. *f.* 3.

Mixtures, the
qualities of
which are well
known, not sold
as nostrums.

And nothing herein shall extend to charge any mixture, composition, or preparation whatsoever, vended by any such surgeon, apothecary, chemist, or druggist, or by any person who has served as a surgeon in the navy or army, the properties whereof are known and approved; and wherein the person compounding or vending the same has not, nor claims to have, any secret or unknown art for the mixing thereof,

not

nor to the preparing or vending such medicines by the authority of letters-patent; nor which are advertised or recommended by the makers or venders thereof, as nostrums or proprietary medicines, or as specifics for the prevention or cure of any distemper or complaint. *f. 4.*

And every person who shall make or expose to sale any medicines liable to the said duties, shall first give notice in writing at the next stamp-office, of the place he intends to make use of, and also give an account of all drugs, oil, water, essences, tinctures, powders, or other preparations and compositions subject to the said duty, that shall be by him made, or exposed to sale, or intended so to be; and such notice shall be given as often as he shall change his place, or vary the articles in which he shall so deal: and the said notice shall contain the true name of all such drugs, the kinds and qualities thereof, and the prices at which they are intended to be sold; on pain that every person making default shall forfeit 10*l.* *f. 15.*

And every person making or vending such medicines, subject to the said duties, shall send to the said commissioners, or officers appointed by them, paper covers, wrappers, or labels, made for inclosing such medicines, with his name, on any other particular word or thing printed thereon, to denote the value at which the same is intended to be sold, that the same may be stamped, and delivered back as occasion may require: and every such packet, or other inclosure, containing any such medicine, shall have such stamped cover fixed thereto, in such manner as the commissioners shall direct. *f. 9.*

And if any person shall vend, or expose to sale any such medicine not having such cover affixed thereto, stamped as aforesaid; if it shall be stamped with a stamp of less value than as before directed, he shall forfeit 5*l.* for every such packet, box, bottle, or phial. *f. 10.*

Any person who shall fraudulently take off any mark or stamp, from any such packet, &c. after the same has been sold; or affix to any such packet, box, &c. any cover which has been before used; or shall buy or sell any such cover, to be again made use of; or shall buy or sell, or expose to sale any such packet with such fraudulent cover affixed thereto, shall forfeit 10*l.* And either buyer or seller informing against the other shall be indemnified, and shall be admitted to give evidence, and receive the same benefit as any other informer. *f. 11, 12, 13.*

Persons bringing to the head office of stamps, any such paper covers, &c. to be stamped as aforesaid, the duties where- Discount for prompt pay-
of ment.

of shall amount to 10*l.* or upwards, shall have an allowance on present payment of the said duty, after the rate of 2*l.* and if such duty shall amount to 50*l.* or upwards, 5*l.* in the hundred *per annum.* *s.* 14.

To what medicines this act shall extend.

To obviate any doubts to what medicines the said duties shall extend, a schedule is annexed to the statute at large, and the said duties are to extend to every article named therein, or by whatsoever other name it has been or may be called or known. And all medicines wherein the person making or preparing the same, hath or claims to have any secret art, or exclusive right to the making or selling thereof by letters patent; or which are advertised or recommended by the maker or vender, as nostrums or medicines for prevention or cure of distempers or complaints as aforesaid, shall be liable to the said duties. *s.* 16.

Penalties how to be recovered.

All pecuniary penalties under this act may be sued for in the courts at *Westminster*; or may be recovered before any neighbouring justice, on complaint made within six months after the offence is committed; who may summon the party accused, and the witnesses; and upon confession, or oath of one witness, give judgment therein, and levy such penalty by distress; and for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid. *s.* 20.

Appeal.

And any person who may think himself aggrieved by the judgment of such justice, may, on giving security to the amount of such penalty and costs, in case judgment be affirmed, appeal to the next sessions, whose determination shall be final, and they may award costs as to them shall seem meet. *s.* 22.

Witnesses not appearing.

Witnesses not appearing after having been duly summoned, without reasonable cause to be allowed by the justice, shall forfeit 40*s.* *s.* 23.

Conviction.

And the justice before whom any offender shall be convicted as aforesaid, shall cause the conviction to be made out in the following form, or to the same effect.

Form of conviction.

Be it remembered, that on the day of in the year of
our Lord in the county of A. B. of was con-
victed before me E. B. one of his majesty's justices of the peace
for the said county, residing near the place where the offence
was committed, for that the said A. B. on the day of
now last past, did, contrary to the form of the statute in that
case made and provided, [here state the offence]; and I do
declare and adjudge, that he the said A. B. hath forfeited the
sum of of lawful money of Great Britain, for the of-
fence

fence aforesaid, to be distributed as the law directs. Given,
 &c. f. 24.

All penalties, if sued for within six months of the time of Application of being incurred, shall be half to the king, and half with full the penalties. costs to the person who shall inform and sue. If after six months, the whole shall go to the king. f. 19, 21.

But where the justice shall see cause, he may mitigate such Mitigation of penalties, so as not to reduce the same lower than one moiety over and above the costs. f. 25.

Metheglin. See ALEHOUSES.

Militia.

BY the 26 G. 3. c. 107, it is enacted, That all former acts relating to the militia are, from Sept. 24, 1786, repealed, (except such acts as relate to the city of London, the Tower Hamlets, and the Cinque-Ports); and the militia raised by such former acts, shall be subject to this act. f. 135.

As it would be impossible to assign a satisfactory reason for preserving the old militia laws which no longer exist; the new militia laws, as reduced into one statute, it is apprehended, will only be required. Our intention is to give the law as it is on this subject, not as it was. As the whole law under this title is comprized in the 26 G. 3. c. 107, we shall endeavour to arrange the matter of which it is composed in the most perspicuous order, as follows:

- I. Officers how appointed, their Qualification, and Regulations for forming the Militia into Regiments and Companies.
- II. The Number of Men directed to be raised in the respective Counties.
- III. Issuing Precepts, and returning and regulating Lists.
- IV. Proportioning the Numbers of Men in the Hundreds, Rapes, Lathes, Wapentakes, Parishes, Tithings, or Places.
- V. Of Balloting.
- VI. Swear

VI. Swearing an dinrolling Persons baloted, or their Substitutes.

VII. Certain Regulations respecting the Militia.

VIII. Proceedings in those Places where the Militia shall not be raised annually.

IX. Training and Exercise of the Militia.

X. Militia drawn out into actual Service.

XI. General Power of enforcing the Execution of this Act.

XII. Exceptions respecting particular Places.

XIII. Privileges, Indulgences, and Exemptions of Militia Men.

XIV. Punishment for Desertion or Disobedience of Orders.

XV. Cloathing and Pay.

I. Officers how appointed, their Qualification, and Regulations for forming the Militia into Regiments and Companies.

Lieutenants, deputy-lieutenants, and commissioners, how appointed.

The lieutenants for the several counties, ridings, and places, are to be appointed by the king; and every such lieutenant shall have the chief command of the militia within the county, riding, or place to which he is appointed; and shall call together, arm, and array them, once in every year, as herein after directed. And such lieutenants shall, from time to time, appoint twenty or more such persons as they shall think fit, if so many are to be found; if not, as many as can be found, being qualified as herein after mentioned, and residing within their respective counties, ridings, and places, to be their deputy-lieutenants (the names of such persons having been first presented to his majesty, and they approved by him): and shall also appoint a proper number of colonels, lieutenant-colonels, majors, and other officers, qualified as herein after directed; and shall certify to his majesty the names and ranks of all such officers so appointed: and if his majesty shall, within fourteen days after such certificate shall have been laid before him, signify his disapprobation of any such persons, the lieutenant shall not grant him a commission, but shall grant commissions to the persons so appointed, who shall not be disapproved by his majesty. *s.* 1, 4.

And

And the officers so appointed for the militia shall rank Rank.
with the officers of such of his majesty's forces as are liable
to serve out of *Great-Britain*, as youngest of their rank.

If the lieutenant shall be out of the kingdom of *Great-Britain*, or there shall happen to be no lieutenant, the king Absence of the
may authorise any three deputy-lieutenants to grant com- lieutenant, or
missions to officers on any vacancy that shall then happen; vacancy of the
and to do all other things which might have been done by lieutenantancy.
the said lieutenant, and which shall be as valid in law as if
done by the said lieutenant himself. *f. 2.*

But no deputation or commission shall be vacated by the
revocation, expiration, or discontinuance of the lieutenant's
commission. *f. 3.*

And every person, in order to be qualified for the ap- General qualifi-
pointment of a deputy-lieutenant, shall be seised or possessed, cations of the
in law or equity, for his own use and benefit, in possession, respective offi-
of a freehold, copyhold, or customary estate for life, or for cers.
the life of his wife, she having a freehold, copyhold, or cus-
tomary estate for her life, or for some greater estate, or of
an estate for some long term of years, determinable on one
or more lives, in manors, messuages, lands, tenements, or
hereditaments, in *England, Wales, or Berwick upon Tweed*,
of the yearly value of 200*l.* or shall be heir-apparent of
some person in like manner seised or possessed of a like estate
of the yearly value of 400*l.* *Id. f. 5.*

A colonel shall be possessed of a like estate of the clear Colonel.
yearly value of 1000*l.*, or be heir-apparent to some person
possessed of a like estate of the yearly value of 2000*l.* *Id.*

A lieutenant-colonel shall be possessed of a like estate of Lieutenant-
600*l.*, or be heir-apparent to some person possessed of a like colonel.
estate of the yearly value of 1200*l.* *Id.*

A major or captain shall be possessed of a like estate of Major or cap-
the yearly value of 200*l.*, or be heir-apparent of some per- tain.
son possessed of a like estate of the yearly value of 400*l.*; or
shall be a younger son of some person who shall be, or at the
time of his death was, possessed of the like estate of the year-
ly value of 600*l.* *Id.*

A lieutenant shall be possessed of a like estate of the yearly Lieutenant.
value of 50*l.*, or personal estate of the value of 1000*l.*, or
real and personal estate together to the value of 2000*l.*; or
be the son of a person who shall be, or at the time of his
death was, possessed of a like estate of the yearly value of
100*l.*, or personal estate alone of the value of 2000*l.*, or real
and personal together of the value of 3000*l.* *Id.*

An ensign shall be possessed of a like estate of the yearly value Ensign.
of 20*l.*, or personal estate alone of the value of 500*l.*, or real and
personal

personal together of the value of 1000*l*; or be the son of some person who shall be, or at the time of his death was, possessed of a like estate of the yearly value of 50*l*, or personal estate alone of the value of 1000*l*; or real and personal estate together of the value of 1500*l*. *Id*.

And one moiety of the said estates, required as qualifications for each deputy-lieutenant, colonel, major, and captain respectively, shall be situate or arising within such respective county or riding in which he shall be appointed to serve. *Id*.

These are the general qualifications; but, in the smaller shires, estates less considerable are qualifications for the respective ranks; For,

What are qualifications in the smaller counties.

In the several counties of *Cumberland, Huntingdon, Monmouth, Westmorland, and Rutland*, and in every county and place in *Wales*, the qualification shall be as follows: A deputy-lieutenant shall be possessed of a like estate as aforesaid of the yearly value of 150*l*, or be heir-apparent of a person having a like estate of 300*l*. A colonel 600*l*, or heir-apparent of a person having 1200*l*. A lieutenant-colonel or major-commandant 400*l*, or heir-apparent of a person having 800*l*. A major or captain 150*l*, or the son of a person having or who had at the time of his death 300*l*. A lieutenant 30*l*, or personal estate alone of 600*l*, or real and personal together of the value of 1200*l*; or the son of a person having, or who had at the time of his death, an estate of the yearly value of 60*l*, or personal estate of the yearly value of 1200*l*; or real and personal estate together 2400*l*. An ensign 20*l*, or personal estate alone of 300*l*, or real and personal together of 600*l*; or the son of a person having, or who had at the time of his death, an estate of the yearly value of 30*l*, or personal estate of the value of 600*l*, or real and personal together of 1200*l*. And half of such estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising in their respective counties. *s. 6*.

Qualifications in the Isle of Ely.

And in the *Isle of Ely*, a deputy-lieutenant shall be possessed of a like estate of the yearly value of 150*l*, or be heir-apparent to a person having a like estate of 300*l*. A captain 100*l*, or be heir-apparent of a person having 200*l*; or younger son of a person who shall be, or at the time of his death was, possessed of an estate of the yearly value of 300*l*. A lieutenant 30*l*, or personal estate of 600*l*; or the son of a person who shall be, or at the time of his death was, possessed of a like estate of 60*l*, or personal estate of 1200*l*. An ensign 20*l*, or personal estate of 300*l*;

300*l.* or the son of a person who shall be, or at the time of his death was, possessed of the like estate of the yearly value of 30*l.*; or personal estate of 600*l.* And half such estates, except those for the qualification of lieutenants and ensigns, shall be situate or arising within the said isle, or some other part of the county of Cambridge. *s.* 7.

In all the cities and towns which are counties within themselves, and have heretofore raised and trained a separate militia within their respective liberties, and which are united with and make part of any county for the purposes of raising the militia only, the *lieutenant* of every such city or town, or, if there is no lieutenant appointed, the chief magistrate of such city or town shall appoint the *deputy-lieutenants*, and officers of the militia, whose number and rank shall be proportionable to the number of militiamen which such city or town shall raise, as their quota towards the militia of the county to which such city or town is united for the purposes aforesaid. And all powers and provisions with respect to counties at large, shall take place in the said cities or towns. And the qualification for a *deputy-lieutenant* shall be 150*l.* a year; or a personal estate alone, or real and personal estate together to the amount of 3000*l.* A *field-officer* 300*l.*; or personal estate alone, or real and personal estate together to the amount of 5000*l.* A captain 150*l.* a year; or personal estate alone, or real and personal estate together to the amount of 2500*l.* A *lieutenant* 30*l.* a year or personal estate of 750*l.* An *ensign* 20*l.* a year, or personal estate of 400*l.* And half such estate, except those for the qualification of lieutenants and ensigns, shall be within such city or town, or within the county to which such city or town is united for the purposes aforesaid. *s.* 8.

Qualifications in cities or towns being counties of themselves.

And the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, on reserved rents, and which are to the lessees of the clear yearly value of 300*l.* shall be deemed equal to an estate herein before described of the yearly value of 100*l.* and so in proportion. *s.* 9.

How reversions are estimated.

And a person possessed, either in law or equity, for his own use and benefit, of an estate for a certain term; originally granted for twenty years or more, of an annual value (over and above all rents and charges payable out of it) equal to the annual value of such an estate as is required for the qualification of a *deputy-lieutenant* and commissioned officer respectively, and situate as aforesaid, shall be deemed sufficiently qualified. *s.* 10.

Estates for a certain term to a sufficient amount, give a qualification.

No commission above a lieutenantancy to be granted till the qualification is delivered.

Former commissions declared void, unless qualifications have been or shall be delivered before 1st Jan. 1787.

Further time granted to 1st July 1787.

Further time to Sept. 1, 1788.

Peers and their heirs-apparent need not shew their qualifications.

Commission not to vacate a seat in parliament.

No person shall be appointed a *deputy-lieutenant*, nor raised to a higher rank than that of *lieutenant*, till he shall have delivered in to the clerk of the peace or his deputy, a specific description in writing, signed by himself, of his qualification; mentioning the parish in which the estate which forms such qualification is situate: and such clerk of the peace shall transmit to the lieutenant a copy of such description; and no commission hereafter granted for a higher rank than that of lieutenant shall be valid, unless it be declared in the commission, that such officer has delivered in his qualification as above directed. *f. 11.*

And every deputy-lieutenant and officer holding a commission as colonel, lieutenant-colonel, major, or captain, who shall not have transmitted a specific description as before directed, is required before *January 1, 1787*, to transmit such description to the clerk of the peace, who shall forthwith transmit a copy thereof to the lieutenant (or to the deputy lieutenants authorised as aforesaid to execute the office of lieutenant); and if any such officer should not transmit such description within the time before limited, his deputation or commission is declared void, and himself incapable of being a deputy-lieutenant, or of serving as an officer in the militia again in the same or any higher rank. *f. 12.*

But by the 27 G. 3. c. 8. *f. 18*, Further time is given to such deputy-lieutenants and officers who had neglected to transmit such description of their qualification, provided they delivered it on or before the 1st of *July 1787*, and they are indemnified from all penalties, forfeitures, incapacities, and disabilities, incurred by reason of such omission or neglect.

And by the 28 G. 3. c. 22. *f. 8*, Deputy-lieutenants, and officers in the militia, who have omitted to deliver their qualifications, as directed by 26 G. 3. c. 107, and who shall, before *September 1, 1788*, deliver in such qualifications as are required by the said act, shall be indemnified.

But nothing herein shall extend to restrain or prevent any peer of this realm, or his heir-apparent, from being appointed, or acting as a deputy-lieutenant, or commission officer, within the county or place wherein he shall have some place of residence; or to oblige any peer, or his heir-apparent, to leave a qualification with the clerk of the peace. *f. 14.*

And the acceptance of a commission in the militia, shall not vacate the seat of any member returned to serve in parliament. *f. 148.*

But

But no commission of lieutenancy, or other commission already granted by virtue of any former acts, shall be annulled by the repeal of those acts, but the persons to whom such commissions have been granted, may act as if this act had not been made; but no person shall act as deputy-lieutenant, colonel, lieutenant-colonel, major, or captain, by virtue of any commission already granted, unless he is qualified as aforesaid, and unless he has delivered, or shall deliver such description thereof as aforesaid. *s. 136.*

Repealing the former acts, not to annul commissions.

The clerk of the peace shall enter such qualification so transmitted to him on a roll kept for that purpose, and cause to be inserted in the Gazette the dates of the commissions, and names and rank of the officers; with the names of the officers in whose room they are appointed, as commissions in the army are published from the war-office; and the expence of such insertion shall be paid by the treasurer of the county; and such clerk of the peace shall in January, yearly, transmit to one of the secretaries of state a complete account of the qualifications so left with him, to be laid before parliament: and every deputy-lieutenant and commissioned officer, not having already taken and subscribed the oaths, and made and subscribed the declaration as required by this act, shall, at some general quarter-sessions, or in one of the courts at *Westminster*, within six months after he shall have accepted his commission, take the oaths, and make and subscribe the declaration, as other persons qualifying for offices. *s. 13.*

Qualifications, and dates of the commissions, to be inserted in the Gazette.

Officers to take the oaths.

And if any deputy-lieutenant, colonel, lieutenant-colonel, or major shall act, not being so qualified, or without having delivered in such description of his qualification, he shall forfeit 200*l.* and every captain 100*l.*; half to him who shall sue, and half to the uses herein after directed. And the proof of the qualification shall lie on him against whom the action is brought. *s. 14.*

Penalty on acting without being qualified.

His majesty's lieutenant, together with three deputy-lieutenants, and, on the death or removal, or in the absence of his majesty's lieutenant, any five deputy-lieutenants, may, at the end of every five years, at their annual meetings, if the militia of such county or place shall not be then embodied, discharge some one field officer of each regiment or battalion, and such a number of officers of each inferior rank, as shall be equal to the number of persons who shall have given notice in writing to his majesty's lieutenant, one month at least before such meeting, that they are willing to serve as field officers, captains, lieutenants, or en-

How long the officer shall continue.

signs, as the case may require: Provided, that the number of vacancies to be made shall not exceed one third of such officers who shall have served for five years in each rank respectively: Provided also, that nothing herein shall prevent any officer serving, or who has served in an inferior rank, from offering himself to serve in a higher rank, if he be qualified to serve in such higher rank. /s. 15.

When not sufficient for a battalion, to be formed into independent companies.

Lieutenant may act as colonel, where there is no colonel appointed.

In the absence of the colonel, &c. the next officer in rank to have the command.

Lieutenant-colonel of five years standing to have the rank of colonel.

Where the number of men shall not be sufficient to form a battalion, they shall be formed into independent companies; each company consisting of eighty private men at the most, and sixty at the least, with one captain, one lieutenant, and one ensign to each company. And his majesty may join together any number of such independent companies and form a battalion, or incorporate them with any other regiment or battalion, provided the number of companies be not made to exceed the number of companies of which a regiment or battalion is herein directed to consist. /s. 54.

His majesty's lieutenant is authorised to act as colonel or commanding officer of any regiment, battalion, or independent company, during such time as there shall be no colonel or commanding officer appointed; but no lieutenant shall act, at any one time, as colonel or commanding officer to more than one body of militia, whether regiment, battalion, or independent company. And where such lieutenant shall take the command of any body of militia not by this act deemed a regiment, he shall be entitled to the rank of colonel, except when the said company shall be formed into battalion as herein after directed; but shall receive no greater pay than the proper commanding officer of such body would be entitled to. /s. 55.

When a colonel or commanding officer of any regiment, battalion, or independent company, shall be absent from *Great-Britain*, all the powers by this act given to him, may lawfully be exercised by the next officer in command, residing within *Great-Britain*, till such colonel or commanding officer shall be returned, and shall have notified his arrival to the clerk of the peace: and such clerk of the peace shall forthwith, upon receipt of such notification, transmit an account thereof to the officer who shall have been next in command as aforesaid; and all acts done by such officer next in command, shall be as valid in law, as if they had been done by the colonel or commanding officer himself. /s. 56.

And when a battalion is commanded by a lieutenant-colonel, who shall have been commandant of it for five years, the lieutenant, with the consent of his majesty, may give

give such lieutenant-colonel commandant, a commission of colonel. *f. 57.*

Where the number of men in any county, riding, or place, is sufficient, the militia thereof shall be formed into a regiment, not to consist of more than twelve, nor less than eight companies; of eighty private men to a company at the most, and sixty at the least; and the field-officers shall be one colonel, one lieutenant-colonel, and one major: if under eight, and not less than five companies, such militia shall be formed into a battalion, of which the field officers shall be, one lieutenant-colonel, and one major only: and if under five, and not less than three companies, into a battalion with one lieutenant-colonel, or major, and no other field officer. And in each regiment or battalion there shall be one captain, one lieutenant, and one ensign to each company: but every battalion of five companies or more, may have one company of grenadiers or light infantry, to which two lieutenants shall be appointed, instead of one lieutenant and one ensign: and every regiment of eight companies or more, may have one company of grenadiers and one of light infantry, to each of which two lieutenants shall also be appointed. *f. 53.*

And where the number of men is sufficient to form six companies, but not to form a regiment, the lieutenant may appoint three persons to serve with the rank of colonel, lieutenant-colonel, and major, but with no higher pay than if they were appointed lieutenant-colonel, major, and captain. And where the number is sufficient to form four, but not to form six companies, the lieutenant may appoint two persons to serve with the rank of lieutenant-colonel and major, but only one of them shall be entitled to any higher pay than that of a captain. And where the number is not sufficient to form more than two companies, the eldest captain shall rank as major, but with the pay of captain. *f. 58.*

Where there are not a sufficient number of men to form a regiment.

Any person duly qualified as a lieutenant, may be appointed captain-lieutenant in any regiment or battalion consisting of not less than six companies, but such captain-lieutenant shall not, by the date of his commission or otherwise, rank above a lieutenant. *f. 59.*

Captain-lieutenant.

No adjutant, surgeon, regimental or battalion clerk, or quarter-master, shall be capable of being appointed captain of a company; nor shall any captain of a company be appointed to any of those places: but a battalion-clerk may be appointed a captain-lieutenant in any regiment or battalion entitled to one by this act. *f. 62.*

No adjutant, surgeon, regimental or battalion clerk, or quarter-master to be appointed captain.

Appointment
of adjutant from
his majesty's
other forces.

His majesty may appoint one proper person who shall have served, or shall then actually serve, in some of his majesty's other forces, or in any corps of militia which has been drawn out and embodied, to be an adjutant to each regiment, battalion, or independent company; and if such adjutant shall be appointed out of his majesty's other forces, he shall, during his service in the militia, preserve his rank in the army, as if he had continued in that service; and his majesty's lieutenant may give him a commission of lieutenant or ensign, though such adjutant may not have the qualification required by this act. And the lieutenant may, on the recommendation of the commanding officer of any regiment or battalion, consisting of not less than six companies, appoint such adjutant to the rank of captain by *brevet*, if he has served five years as a lieutenant, either in the militia or other forces, though he may not have the qualification required by this act for captain. But no such appointment shall be valid, unless in the instrument granting the same it be specified, in what regiment or battalion, and whether in the militia or other forces, such adjutant has served as a lieutenant, together with the date of his commission. But no adjutant so appointed to the rank of a captain, shall by the date of such appointment, or otherwise, rank above or command any captain, or be entitled to greater pay than that of a lieutenant, and his pay as adjutant. *s. 60.*

Appointment of
serjeants, corporals,
and drummers.

Serjeants, corporals, and drummers, shall be appointed in the following proportion (when the regiment is not in actual service) viz. one serjeant and one corporal to every thirty men, and one drummer to every company; with an additional drummer to each flank company of regiments or battalions consisting of six or more companies; and where there shall be a surplus of fifteen men or upwards, one additional corporal for such surplus of men; and all serjeants and corporals shall take the following oath:

Oath to be
taken by ser-
jeants and cor-
porals.

"I, *B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king *George*; and I do swear that I am a protestant, and that I will faithfully serve as a serjeant [or corporal] in the militia, within the kingdom of Great-Britain, for the defence of the same, until I shall be legally discharged."

Serjeants, cor-
porals, &c. may
be discharged,
and others ap-
pointed.

And any serjeant, corporal, or drummer, may be discharged by the colonel or commanding officer, with the consent of the captain of the company: and such captain, with the approbation of the commanding officer, may ap-
point

point another proper person in the room of every serjeant, corporal, and drummer who shall die, desert, or be discharged. *f. 64, 65.*

All serjeants, corporals, and drummers, who have received pay as such, shall be deemed to be engaged, and compellable to serve in such regiment, battalion, or independent company, till they shall be legally discharged. *f. 64.*

But no person keeping any house of public entertainment, or who shall sell any ale, wine, or spirituous liquors by retail, shall be capable of serving as a serjeant, corporal, or drummer. *f. 64.*

The colonel, or commanding officer of every battalion which consists of four or more companies, may appoint a serjeant-major out of the serjeants, and a drum-major out of the drummers.

And if the lieutenant or commanding officer shall choose to have a greater number of drummers than one per company, to be employed as fifers or musicians, and shall be willing to defray the expence of such additional drummers, he may retain any number of drummers who are now employed as fifers or musicians, over and above the number established by this act; or at any time hereafter he may engage any additional number of drummers, to act as fifers or musicians in their respective corps, and they shall be deemed as drummers of militia; and be subject to the same orders, regulations, penalties, and punishments, as other drummers; and shall continue to serve so long as they shall receive the same pay and cloathing as other drummers, or better, and no longer. *f. 66.*

When a regiment or battalion shall be drawn out into actual service, and during the time such regiment or battalion shall continue in actual service, the colonel, or, if there is no colonel, the commanding officer, shall appoint an agent; and such colonel or commanding officer respectively, shall be liable to make good all deficiencies on account of the pay, cloathing, or public stock. *f. 100.*

The colonel or commanding officer of every regiment or battalion, which shall consist of more than two companies, (when not in actual service) may appoint a regimental or battalion-clerk, who shall execute the office of paymaster; but where there are no more than two companies, no clerk shall be allowed, but the receiver-general of the land-tax shall pay the money necessary to the commanding officer of such companies, who shall account with the receiver-general for the same. *f. 63.*

Clerk of the general meetings. And the lieutenant of every county, riding, or place, shall appoint a clerk of the general meetings, and may, at any time, displace such clerk if he shall think fit, and appoint another in his room. *f. 16.*

Clerks of the subdivision meetings. And the deputy lieutenants, within their respective subdivisions, shall appoint a clerk for their subdivisions, and may also displace him if they think fit, and appoint another in his room. *Id.*

II. The Number of Men directed to be raised in the respective Counties.

Number of private men. The seventeenth section of this act of 26 G. 3. c. 107, enacts, That the number of private men to be raised (exclusive of the places herein after excepted) shall be as follows:

For the county of Bedford	400
Berks	560
Bucks	560
Cambridge	480
Chester, with the city and county of the city of	
Chester	560
Cornwall	640
Cumberland	320
Derby	560
Devon, with the city and county of the city of	
Exeter	1600
Dorset, with the island of Purbeck, and the town	
and county of the town of Poole	640
Durham	400
Essex	960
Gloucester, with the city and county of the city of	
Bristol	960
Hereford	480
Hertford	560
Huntingdon	320
Kent, with the city and county of the city of	
Canterbury	960
Lancaster	800
Leicester	560
Lincoln, with the city and county of the city of	
Lincoln	1200
Middlesex (exclusive of the tower hamlets)	1600
Monmouth	240
Norfolk,	

Militia

337

Norfolk, with the city and county of the city of	
Norwich	960
Northampton	640
Northumberland, with the town and county of the	
town of Newcastle, and town of Berwick	560
Nottingham, with the town and county of the town	
of Nottingham	480
Oxford	560
Rutland	120
Salop	640
Somerfet	840
Southampton, with the town and county of the town	
of Southampton	960
Stafford, with the city and county of the city of	
Litchfield	560
Suffolk	960
Surrey	800
Sussex	800
Warwick, with the city and county of the city of	
Coventry	640
Westmorland	240
Worcester, with the city and county of the city of	
Worcester	560
Wilts	800
York, West Riding, with the city and county of	
the city of York	1240
North Riding	720
East Riding, with the town and county of the	
town of Kingfton	400
Anglesea	80
Brecknock	160
Cardigan	120
Caermarthen	200
Caernarvon	80
Denbigh	280
Flint	120
Glamorgan	360
Merioneth	80
Montgomery	240
Pembroke	160
Radnor	120
Total	30,740

His majesty's lieutenant shall annually transmit to the privy-council, an account in writing of the true state of the number of persons fit and liable to serve in the militia for counties. Proportioned in the several
the

the county, &c. of which he is lieutenant; and after all the numbers shall be so transmitted to the privy-council, they shall fix and settle, as near as may be, the number of militiamen, who shall for the future serve for each county, &c. by the proportion which the numbers so returned bear to the whole number of militiamen directed to be raised, and forthwith transmit accounts of the numbers so fixed and settled to all his majesty's lieutenants of the several counties respectively. *f. 50.*

Where the number of militiamen so fixed and settled, shall exceed the number of militiamen by virtue of this act appointed to serve for any county, riding, or place; then his majesty's lieutenant, with two deputy-lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, three deputy-lieutenants, shall, at a general meeting held for that purpose, appoint what number of militiamen shall serve for each respective hundred, rape, lathes, wapentake, or other division, within the county, &c. to which they belong; and the additional number of militiamen to make up the whole number so fixed and settled, shall be provided or chosen, and sworn and inrolled, like all other militiamen. And where the number of militiamen so fixed and settled, shall be less than the number of militiamen, by virtue of this act appointed to serve for any county, &c. then his majesty's lieutenant, together with two deputy-lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, three deputy-lieutenants, shall, at a general meeting held for that purpose, discharge by lot proportionably out of each hundred, rape, lathes, wapentake, or other division, so many militiamen as shall exceed the number so fixed and settled as aforesaid. *Id.*

III. Issuing Præcepts, and returning and regulating Lists.

General meeting to be held.

General meetings of the lieutenancy of every county, &c. shall be holden in some principal town; to consist of the lieutenant, two deputy-lieutenants, or, on the death or removal, or in the absence of the lieutenant, then of three deputy-lieutenants; and one such general meeting shall be annually, on the last *Tuesday* before the 24th day of *October* in every year; and such lieutenant, with two deputy-lieutenants, or on the death, removal, or absence of the lieutenant, three deputy-lieutenants, may summon other general meetings on any days to be fixed by such summons, of which

which days and places respectively, notice shall be given in the *London Gazette*, and in any weekly news-paper usually circulated in such county, &c. fourteen days before the days appointed for holding such meetings respectively. And if any annual or other general meeting shall not be attended by the lieutenant, or a sufficient number of deputy-lieutenants, the lieutenant or any deputy lieutenant may adjourn it to any other time or place within such county, &c. And if no deputy-lieutenant shall attend, the clerk of the general meetings shall adjourn such meetings to any other time, to be holden at the same place. *f. 18.*

And at such general meeting they shall appoint the first meetings of the deputy-lieutenants within the several subdivisions, which shall be held as early after *October 24* in every year as conveniently may be. *f. 22.*

And such *subdivision meetings* shall consist of two deputy lieutenants at the least; and if two deputy-lieutenants shall not attend, one deputy-lieutenant and one justice may do all acts, matters, and things, by this act directed to be done by deputy-lieutenants at their subdivision-meetings.

The respective clerks of the subdivision-meetings shall, as soon as conveniently may be after such meetings shall have been appointed, give notice in writing of the time and place of meeting to those deputy-lieutenants who shall reside within such division, and also to the commanding officer of the regiment or battalion, if on actual service, or, if not, to the colonel thereof; or, in his absence from *Great-Britain*, to the next commanding officer; and an account of the several days fixed for receiving lists, and for balloting and in-rolling the men. *f. 20.*

And if at any subdivision meeting there shall not appear two deputy-lieutenants, or one deputy-lieutenant and one justice, the clerk shall, by notice in writing given to all the deputy-lieutenants within such division, or left at their respective places of abode, appoint another meeting to be held within fourteen days, at the same place: such notice to be given at least five days previous to such meeting. *f. 21.*

At such first general meeting they shall issue their orders to the chief constable; and where there is no chief constable, to some other officer of the several hundreds, rapes, tithes, wapentakes, or other divisions, to require, by orders under their hands, the constable or other such officer of each parish, tithing, or place, to return to the deputy-lieutenants within the subdivisions, at the place, and on the day appointed, at the said first general meeting, fair and true lists in writing of the names of all men usually and then dwelling

Appointing subdivision-meetings.

Of whom they are to consist.

Notice in writing to be given of subdivision meetings.

Where a sufficient number shall not appear.

Precepts to be issued for returning lists of men between the ages of eighteen and forty-five years.

in their respective parishes, tithings, and places, between the ages of eighteen and forty-five years, distinguishing their respective ranks and occupations; and if their true names cannot be procured, their common appellations shall be sufficient; and which of them labour under any infirmity which may appear to incapacitate them from serving, having first affixed a true copy of such list on the door of the church or chapel, and if there is no church or chapel in the place, then on the door of the church or chapel of some parish or place thereto adjoining, on some *Sunday* morning, before they shall make such return; such *Sunday* to be at least three days before the said meeting; and also notice in writing, at the bottom of such list, of the day and place of such meeting, and that those who think themselves aggrieved may then appeal, and that no appeal will afterwards be received. *s. 22.*

Persons refusing
or falsely telling
their names.

Any person refusing to tell, or who shall falsely tell his christian and surname, or the christian and surname of any man residing or lodging in his house, to any constable or other officer authorised by this act to demand the same, shall forfeit 10*l.* *s. 31.*

Where a person
has two places
of residence.

And where a person shall have more than one place of residence, he shall serve for the county or place where his name shall have been first inserted in a list and returned; and the clerk to the subdivision meeting to which such list shall be returned, shall on request grant a certificate *gratis*, that such person's name was inserted in such list, specifying the time when such list was made and returned. *s. 32.*

Parishes in two
or more coun-
ties.

And where a parish shall lie in two or more counties or ridings, the inhabitants shall serve in such county or riding wherein the church belonging thereto is situate; which shall, for the purposes of this act, be deemed part of that county or riding. *s. 33.*

Persons exempt-
ed from serving,
or finding a
substitute.

But no peer of this realm, nor any person serving as a commissioned officer in his majesty's other forces, or in any of his castles or forts; nor any non-commissioned officer, or private man serving in any of his majesty's other forces; nor any commissioned officer serving, or having served four years in the militia; nor any member of any of the universities; nor any clergyman; nor any licenced teacher of any separate congregation; nor any constable, or other peace-officer; nor any artied clerk, apprentice, seaman, or seafaring man; nor any person mustered, trained, and doing duty in any of his majesty's dock yards; nor any person free of the company of watermen of the river *Thames*; nor any person employed and mustered at the *Tower of London*,
Woolwich

Woolwich warren, the several gun-wharfs of Portsmouth, Chatham, Sheerness, and Plymouth, or at the powder-mills, magazines, or store-houses under the direction of the board of ordnance; nor any poor man having more than one child born in wedlock, shall either be compelled to serve personally, or to provide a substitute. s. 27.

Articled clerks.] Though articulated clerks are exempted from this service, attornies are not. In Mr. Gerard's case, in the Common Pleas, H. 17 G. 3, The court were of opinion that it was a pecuniary, not a personal service, because it may, at the option of the party balloted, be commuted for a certain sum of money, namely, 10l; which sum is to be laid out in providing a substitute for the defaulter, who by the payment of the said money stands totally discharged for three years. He has therefore three options allowed him, to serve personally, to find a substitute, or to pay 10l. And it was unanimously agreed, that in this case the privilege should not be allowed. Blackst. Rep. 1123.

Attorneys are not exempted from serving in the militia.

Where the deputy-lieutenants and justices at any subdivision meeting shall receive information, or shall suspect that any person inserted in a list, described as an apprentice, has been fraudulently bound to avoid serving, they may enquire into such binding, summon witnesses, and examine them on oath: and, if such fraud shall appear, they may appoint the person so fraudulently bound apprentice, to serve immediately in the militia of the place for which such list was returned, if there should be a vacancy; if not, then on the first vacancy that shall happen: and the person to whom such apprentice shall be bound, shall forfeit 10l. s. 34.

Fraudulent apprenticeship shall be no exemption, and the master shall pay 10l.

If any person shall, by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces or otherwise, endeavour to prevail on any constable, or other officer, to make a false return, or to erase or leave out the name of any one who ought to be returned, he shall forfeit 50l. s. 31.

Penalty on endeavouring to procure false returns.

And if any chief constable, constable, or other officer, shall refuse or neglect to return such list, or to comply with the orders he shall receive from the deputy-lieutenants, in pursuance of this act; or shall in such return be guilty of any fraud or wilful partiality, or gross neglect, any two deputy lieutenants may imprison him one month in the common gaol, or, at their discretion, fine him in any sum not exceeding 5l. nor under 40l. s. 30.

Constables omitting their duty.

Should the list of any parish or place be lost or destroyed, the deputy-lieutenants, in their subdivisions, may cause a new

List being lost a new one shall be made.

list

list to be made and returned to them at their next subdivision meeting, in the same manner as the former was. *f. 29.*

Second general meeting appointed.

And at such first meeting, the time and place of a second general meeting may also be appointed, for proportioning the numbers, if judged needful, in the several hundreds, or other large divisions. *f. 22.*

List to be returned upon oath.

At the time and place appointed for the first subdivision meeting as aforesaid, for the return of the lists, the constables or other officers respectively shall attend, and verify their return upon oath. *f. 22.*

Appeals to be heard.

And the deputy-lieutenants so assembled in their subdivisions, shall (after hearing any person who shall think himself aggrieved) direct such lists to be amended as the case shall require, and also the names of those who are by this act exempted, to be struck out of the said lists. *Id.*

Appointment for a second subdivision meeting; and return to the clerk of the general meeting.

And at such first subdivision meeting, they shall appoint a time and place for the second meeting within each subdivision, in order to proportion the numbers in the several parishes, tithings, and places; and shall also return to the clerk of the general meeting, certificates under their hands, of the number of men in each parish or place specified in the lists so amended; and such certificates shall be filed by the clerk for the use of the general meetings.

IV. Proportioning the Number of Men in the Hundreds, Rapes, Lathe, Wapentakes, Parishes, Tithings, or Places.

At a general meeting the established allotment of men in each hundred, rape, &c. may be altered.

The lieutenant, with three deputy-lieutenants, or on the death or removal, or in the absence of the lieutenant, five deputy-lieutenants may, at a general meeting, alter the appointed subdivisions within such county, &c. if they shall see occasion, and may alter the established allotment of the number of men in each respective hundred, rape, lathe, wapentake, or other division, according to the numbers contained in such respective certificates, received from the several subdivision meetings. *f. 23.*

Proportioning the men to the parishes or places.

And at the second subdivision meeting as aforesaid, the deputy-lieutenants shall appoint the number of men to serve for each parish, tithing, and place, in proportion to those appointed to serve for each hundred, rape, lathe, wapentake, or other division; and shall appoint another meeting to be holden within three weeks, in the same subdivision. *f. 24.*

Notice to be given of balloting.

They shall also issue an order to the chief constable, or other

other officer of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of each parish, tithing, or place; and of the time and place of the next subdivision meeting for choosing the men by lot. *Id.*

And, whenever they shall think necessary, they may add together the lists for two or more parishes, tithings, or places; and proceed upon such lists added together, in order to make the choice of militiamen by lot as equal and impartial as possible. *s. 28.*

Two or more parishes or places may be added together.

V. Of Balloting.

And at their next subdivision meeting, the deputy-lieutenants shall cause the number of men appointed to serve to be chosen by ballot, out of the lists returned from every parish, tithing, or place. *s. 24.*

Men chosen by ballot out of the lists.

If from any accident, neglect, or mistake, of any chief constable, constable, or other officer, or from any other cause, the full number of men so appointed should not be duly inrolled at the meeting for that purpose, the said deputy-lieutenants shall immediately cause the lists to be amended, and proceed to a fresh ballot; and they may adjourn their meeting, or appoint other meetings, and repeat the amending of the lists as may be necessary. *s. 25.*

Where by neglect or mistake the full number of men are not inrolled.

If any balloted man shall be unable to serve on account of any infirmity, or is not five feet four inches high, or shall be otherwise unfit for the service, and is not possessed of an estate in lands, goods, or money, of the clear yearly value of 100*l.* and who shall make oath thereof, the deputy lieutenants, at any subdivision meeting, shall discharge such person; and, after amending the list, another shall be balloted in his stead. *s. 37.*

Vacancy occasioned by infirmity, diminutive stature, &c

Or, if any militiaman shall desert, or absent himself from his duty, and shall not return or be taken in three months; then, upon certificate thereof from the commanding officer, to the deputy-lieutenants at any of their subdivision meetings, they shall hold a subdivision meeting, and ballot another: and should such absentee at any time return or be taken, he shall, though a person has been chosen in his room, be compelled to serve in the same manner, and for the same term, as if no person had been chosen in his room. *s. 83.*

Vacancy by desertion, to be filled up in three months.

Or if a militiaman, duly sworn and inrolled, should become unfit for the service, the colonel or commanding officer, with two deputy-lieutenants, if the militia shall then

Vacancy by discharge, how to be confirmed, before another be ballotted for.

be within the county, or the commanding officer only, if such militia be absent therefrom, may discharge such militiaman; but no other shall be balloted for in his room, till such discharge be confirmed under the hands of two deputy-lieutenants, at a meeting in the subdivision for which such man was inrolled. *f. 38.*

Vacancy by death or promotion.

When any militiaman shall die, or be appointed a serjeant, corporal, or drummer in the militia; or be discharged by a court-martial, the vacancy thus occasioned shall be filled up by a fresh ballot. *f. 39.*

Substitutes deserting.

If any *substitute*, sworn and inrolled, shall afterwards desert or absent himself, he shall be liable to serve for the full term for which he was inrolled, to be computed from the day he was apprehended: and he shall be subject to such other penalty or punishment, as shall be inflicted upon him for such offence by virtue of this act: and the commanding officer shall cause notice to be given to the clerk of the subdivision for which he was inrolled, of the day on which he was apprehended, and such clerk shall make an entry in the roll of the name of such person, and of the time of his being so apprehended. *f. 84.*

Men to be balloted for in the room of those whose terms will expire before November 20 ensuing.

And the deputy-lieutenants, at their several subdivision meetings, are required to ballot for all militiamen actually serving, whose terms will expire before the 20th of *November* then next ensuing the holding of such meetings, and shall, at a following meeting, to be holden as soon as conveniently may be, inroll the said balloted men or their substitutes: and the commanding officer may from time to time discharge any man whose time of service will expire before the 20th of *November* then next ensuing, and receive any other in his room who has been sworn and inrolled; and such person so discharged, if serving for himself, or if as a substitute, then the person for whom he served, shall be entitled to the same immunity from further service, as if he had served his full term. *f. 40.*

Parishes may offer volunteers without balloting.

But if the churchwardens or overseers of any parish, &c. shall, with the consent of the inhabitants taken at a vestry, or at any other meeting for that purpose, of which three days previous notice shall be given, specifying the cause of calling such meeting, provide and produce any volunteer or volunteers, who shall be approved by the said deputy-lieutenants, they shall then and there be sworn in and inrolled: and only so many shall be chosen by lot, as shall be wanted to make up the whole number to serve for such parish, &c. *f. 42.*

And

And if the churchwardens or overseers of such parish, &c. shall give such volunteers any sum of money to serve, not exceeding 6*l.* each, they may make a rate on the inhabitants, according to the rate made for the relief of the poor; which rate, being approved by one justice, such churchwardens or overseers may collect, and reimburse themselves the sums they shall have paid with the consent of the said inhabitants; and the overplus (if any) shall be applied as part of the poor rate. And if any person shall refuse to pay, one justice, on complaint by such churchwarden or overseer, may levy the same by distress. But no balloted person, who shall have served himself, or by substitute, or who shall be then serving himself or by substitute, shall be liable to pay to such rate. *Id.*

But any person who shall think himself aggrieved by such rate, may appeal to the next sessions, as against the poor rate. *Id.*

And the said deputy lieutenants and justices shall, at their said subdivision meeting for balloting, appoint another meeting to be held within three weeks in the said subdivision, for swearing and inrolling the men. *f. 24.* Meeting appointed for swearing and inrolling.

And they shall issue out an order to the chief constables, to direct the constables or other officers of each parish, &c. to give notice to every man so chosen to appear at such meeting; and such notice shall be given, or left at his place of abode, at least seven days before such meeting. *Id.* Notice to be given to the persons balloted.

VI. Swearing and inrolling Persons balloted, or their Substitutes.

At the said meeting for swearing and inrolling, the constables shall attend, and make a return on oath of the days when such notice was served. *f. 24.* Proof to be made of notice to the person balloted.

And every person, so chosen by lot, shall, on such notice, appear there, and take the following oath:

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance, to his majesty king George; and I do swear, that I am a protestant, and that I will faithfully serve in the militia, within the kingdom of Great-Britain, for the defence of the same, during the time of five years for which I am inrolled, unless I shall be sooner discharged. Oath of the person chosen by lot.

And every person so chosen shall be inrolled (in a roll prepared for that purpose) to serve in the militia, as a private militiaman for five years. *Id.* To be inrolled,

What substitutes shall be accepted.

But if any person so chosen by lot, shall produce for his substitute, a man of the same county or riding, or of some adjoining county or riding, able and fit for service, who shall not have more than one child born in wedlock, and who shall be approved by the said deputy-lieutenants; such substitute shall be inrolled to serve in the militia of such county, &c. as a private militiaman, for five years; and for such further time as the militia shall remain embodied, if, within the space of five years, his majesty shall order such militia to be drawn out and embodied: and such substitute shall take the following oath:

Substitute's oath.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George; and I do swear, that I am a protestant, and that I will faithfully serve in the militia within the kingdom of Great-Britain, for the defence of the same, during the time of five years, or for such further time as the militia shall remain embodied, if, within the space of five years, his majesty shall order and direct the militia to be drawn out and embodied, unless I shall be sooner discharged. Id.

One deputy-lieutenant may administer the oath.

And one deputy-lieutenant may administer the oath required to be taken by any such balloted man, volunteer, or substitute, and such deputy-lieutenant shall require the clerk of the subdivision to inroll the name of every such person, with the date of the day on which such oath was administered, in the roll of such subdivision. /s. 25.

Penalty of a balloted man not appearing to be sworn, or to produce a substitute.

If any person chosen by lot (not being one of the persons called quakers) shall refuse or neglect to appear to take the said oath, and serve in the militia, or to provide a substitute, who shall take the said oath, and sign his consent to serve as his substitute, he shall forfeit 10/. and, at the expiration of five years, be liable to serve again, or provide a substitute; and, in default of payment thereof, and for want of sufficient effects whereon to levy the same, his name shall be entered on the roll, and he shall be delivered over to some proper officer of the regiment, battalion, or independent company for which he was balloted, and be compelled to serve for such term, to be computed from the time of his being apprehended, as any other balloted person would be compellable to serve, and also be subject to the same punishments for afterwards absconding or deserting, as he would have been if he had appeared and been duly sworn and inrolled.. /s. 26.

And

And such penalty shall be applied by the deputy-lieutenants, in providing a substitute for the person who paid it, (who shall be sworn and inrolled as other substitutes) and if any surplus shall remain, the same shall be paid to the colonel or commanding officer, to be applied as part of the regimental stock. /s. 51.

Application of the penalty.

And every person who shall be chosen by lot shall be liable to serve, though he may have removed from the place where his name was inserted in the list, provided he was resident there when the list was prepared. /s. 32.

Ballotted man changing his place of abode.

If any quaker who shall be ballotted, shall refuse or neglect to appear and take the oath and serve in the militia, or to provide a substitute, two deputy-lieutenants shall, if they think proper, on as reasonable terms as may be, hire a fit person to serve as his substitute, who shall take the said oath, and be inrolled as other substitutes; and two deputy-lieutenants may levy, by distress and sale of the goods of such quaker, such sum as shall be necessary to defray the expence of providing such substitute, rendering the overplus (if any) after deducting the charges of such distress and sale: and if sufficient distress cannot be found, and it shall nevertheless appear to such deputy-lieutenants, that such quaker is of sufficient ability to pay 10*l*. they may commit him to the common gaol for three months, or until he has paid such sum of money as such deputy-lieutenants shall have agreed to pay for such substitute. /s. 35.

Quakers being ballotted, and refusing to find a substitute, two deputy lieutenants may hire a substitute, who shall be paid by the quaker.

And if any measures thought to be oppressive shall be used in making such distress, the quaker may complain to the deputy-lieutenants at their next meeting, who shall hear, and finally determine the same. *Id.*

Where any rate shall have been made for providing volunteers, and the churchwardens or overseers shall make complaint to a justice, of any quaker refusing to pay his rate, such justice shall order such costs and charges to be paid for levying such distress as he shall think reasonable, not exceeding 10*s*. on each of the said quakers, where there are no more than two, and where there are a greater number, not exceeding 5*s*. on each. /s. 36.

Quakers refusing to pay the rate made for volunteers.

No person shall be deemed a quaker, within the meaning of this act, who shall not produce at some subdivision meeting, a certificate under the hands of two reputable housekeepers of the people called quakers, acknowledging such man to be one of their persuasion. *Id.*

Who shall be deemed quakers.

Any person who shall have served *personally* or by *substitute*, according to the direction of this act, shall not be obliged

Ballotted man discharged from serving again.

liged to serve again, till by rotation it comes regularly to his turn. *f.* 27.

Substitute not excused.

But a person who has served *only* as a *substitute* shall not, by such service, be exempted from serving again, if he shall be balloted. *Id.*

Servants to be paid their wages.

If any servant, hired by the year, or otherwise, shall be inrolled as a militiaman, and any dispute shall arise between him and his employer, touching any money due to him for service performed before he was sworn and inrolled, or of his being obliged to quit his service by being called out to join the militia in which he shall have been sworn and inrolled, one justice of the county or place where such employer shall inhabit, on complaint made within *three* months from the time of quitting the said service, may hear and determine the same, and order payment of so much wages in proportion to the service performed, as he shall think reasonable: provided the sum in question does not exceed *twenty pounds*; and in case of non-payment for twenty-one days, may levy the same by distress. *f.* 43.

Copies of the rolls to be transmitted.

After every subdivision meeting, the clerk of the said meeting shall, within fourteen days after each meeting, transmit to the clerk of the general meetings, fair and true copies of the rolls signed at such meetings. *f.* 49.

Substitute receiving the hire, and not appearing.

And such clerk of the subdivision meeting shall also, as soon as the militiamen are inrolled, transmit to the colonel or commanding officer, a list specifying the names, trades, and usual places of abode, of all such militiamen as are inrolled; and if substitutes, the names, trades, and places of abode of the persons in whose room they were inrolled. *f.* 20.

If any person shall receive money to serve as a substitute or volunteer, and neglect to appear at the usual meeting appointed for swearing the militiamen, or before some one deputy-lieutenant, he shall, on conviction before one deputy-lieutenant or justice, be compelled to return the money to the person from whom he received it, and shall also forfeit to such person any sum not exceeding 20s. at the discretion of such deputy-lieutenant or justice; and, if he shall not immediately return the money, and pay the said penalty, he shall be committed to the common gaol or house of correction for fourteen days, or till the money shall be returned. *f.* 44.

Justices may compel the payment of bounty to substitutes.

And if a balloted man shall have engaged any person as his substitute, or any churchwardens or overseers shall have engaged any person to serve as a volunteer; and, after he has been inrolled, shall refuse to pay the sum agreed on, any justice may order such sum as shall appear to him to be due, to be paid to the person so engaged, and such justice shall

shall proceed therein in the same manner as directed by 20 G. 3. c. 19. for the recovery of servants' wages. *s.* 45.

VII. Certain Regulations respecting the Militia.

Any officer, serjeant, or other person, who shall inlist any man, knowing him to belong to the militia, or without asking him if he does belong to the militia, shall forfeit 20*l.* for every such offence *s.* 47.

Penalty on en-
listing a militia-
man,

And if any officer, serjeant, or other person, shall wilfully and knowingly, inlist any man to serve in his majesty's other forces, who shall be inrolled or engaged to serve in the militia; every such inlisting shall be null and void. And if any militiaman, offering to inlist, shall deny to such person recruiting for men, that he is a militiaman, (which such officer, serjeant, or other person is required to ask every man offering to inlist); or shall offer himself to serve in any other regiment, battalion, or independent company of militia; every militiaman so offending, shall, on conviction, on the oath of one witness, before one justice, be committed to the common gaol or house of correction, for any time not exceeding six months, over and above any penalty or punishment to which he shall be otherwise liable; and from the day in which his engagement to serve in the militia shall end, and not sooner, shall belong as a soldier to the corps in which he shall have been so inlisted. *Id.*

Inlisting into
the regulars
shall be null and
void.

Or offering to
serve in the mi-
litia elsewhere.

And any person serving in the regular forces, who shall offer himself to serve as a substitute in the militia, shall forfeit 10*l.* to the informer; or be committed to the common gaol or house of correction, for any time not exceeding three months. *Id.*

Regulars offer-
ing to serve in
the militia.

And any person who shall give orders to any serjeant, drummer, or other person serving in the militia, to beat up in any city, town, or place, for volunteers to serve in the militia, shall, on proof thereof upon oath before one justice, forfeit 20*l.*; half of which shall go to the informer. And if such serjeant, drummer, or other person, shall refuse to declare upon oath, before such justice, from whom he received such orders, the said justice may commit him to the house of correction for any time not exceeding three months. *s.* 48.

Giving orders
to beat up for
volunteers.

VIII. Proceedings where the Militia shall not be raised annually.

Counties not raising their militia shall pay 5*l.* a man.

Whereas it may happen, through neglect or otherwise, that in some county or place the militia may not be raised as aforesaid; and as it is reasonable that all his majesty's subjects should contribute equally towards the expence of raising and supporting a militia for the defence of the kingdom, it is enacted, That in every county and place, where no certificate shall have been transmitted to the clerk of the peace of the militia having been raised according to the directions of this act, he shall certify the same under his hand and seal to the justices, at their quarter-sessions next after *December 25* yearly, and such certificate shall be filed among the records of such sessions: and 5*l.* shall be annually paid in lieu of every militiaman directed to be raised within such county or place. *f. 116, 117.*

To be assessed as the county rate.

And the justices, at their sessions next after *December 25* annually, shall rate and assess the 5*l.* per man as aforesaid, upon every such county or place, in like manner as the county rate. *f. 117.*

The assessment to be proportioned between counties, and cities which are counties of themselves.

Where a certain number of militiamen are directed to be raised for any county, together with any city or town being a county of itself, and the militia shall not be raised for such county, city, or town, the payment of the 5*l.* per man shall be apportioned between them, in the proportion that the respective quotas paid by them to the land-tax bear to each other, unless the apportionment of the number of such militia shall actually have been made in pursuance of the lists directed to be returned as aforesaid; in which case the same shall be borne in such proportions as the respective numbers of militiamen so apportioned to be raised in such county, and such city, or town, bear to each other. *f. 118.*

In some cities, &c. the assessment to be raised by the poor rate.

And whereas there are several cities, towns, and places which do not contribute to the county rate, it is therefore enacted, That in such places not rated to the county-rate, such proportion of the said 5*l.* per man shall be levied by a separate assessment, in like manner as the poor rate, by the churchwardens and overseers, who shall pay over the same to the treasurer of the county with which such city, town, or place shall be joined. *f. 119.*

Where a town is in two counties.

Where a town lies in two counties, the money to be paid for it shall be paid to the treasurer of the county where-in the church is situate. *f. 120.*

And

And if the money which ought to have been paid by such city, town, or place, not rated to the county rate, shall not be paid to the treasurer of the county before the first of *June* yearly, the justices, at their *Midsummer* sessions, shall issue an order to the overseers of the poor of every parish or place, within such city, town, or place, requiring them to certify and return to the next *Michaelmas* sessions the several *quotas* that every such division pays to the land-tax for that year; and on such certificate and return being made, the justices at the said *Michaelmas* sessions shall, by warrant to the constable of every such parish or division, levy the same by distress of the goods of the churchwardens and overseers of such parish or division, who shall be reimbursed the money so levied on them respectively, by the same ways and means as money expended for the use of the poor. *f. 121.*

If not paid before June 1, yearly, to be levied by distress.

And the treasurer, on receiving the sum of 5*l.* per man as aforesaid, or any part thereof, shall pay it within one month to the receiver-general of the land-tax, who shall give a receipt for it; and such receipt shall be a sufficient discharge for the payment: and when the whole sum shall be paid, such payment shall be a full discharge and indemnification to such county or place for not raising the militia for the year in respect whereof such payment shall be made. *f. 122.*

Money to be paid by the treasurer to the receiver-general.

And such treasurer shall be allowed 1*d.* in the pound on the whole sum by him received and paid, which may be detained out of the money he shall so receive before payment to the receiver-general. *f. 123.*

To have an allowance of 1*d.* in the pound.

Also every high constable, petit constable, churchwarden, and overseer, who shall act in collecting the said money, shall respectively be allowed 1*d.* in the pound of all such money, to be paid by such treasurer, who may deduct the same out of the money so received by him. *Id.*

The constables, &c. to have 1*d.* in the pound.

And the clerk of the peace shall within fourteen days after the sessions holden next after *December 25* yearly, transmit to the treasury, and also to the receiver-general of the land-tax, a copy signed by him of every certificate which shall have been received as aforesaid; and where such certificate shall have been omitted, he shall in like manner certify such omission, and that he has certified the same to the justices at such sessions, and required them to proceed according to the directions of this act: and such clerk of the peace shall also certify what proceedings have been had at such sessions, in relation to the assessing and raising the said money where the militia shall not have been raised. *f. 124.*

Copies of the returns to be transmitted to the treasury and the receiver-general.

And if such justices shall omit, neglect, or refuse to proceed or raise the said money, then such clerk of the peace

shall, within fourteen days next after such sessions, certify to the solicitor of the treasury such omission, neglect, or refusal, and the names of the justices who shall be present at such sessions. And such solicitor shall proceed by all legal means to compel such justices to pay due obedience to this act, and cause the said money to be raised and paid.
f. 125.

Officers serving,
 or having served,
 shall pay no
 part of the rate.

But no person residing or having an estate within such county or place, who shall have served as an officer for four years, or shall be then serving in the militia as an officer, shall be liable to pay any part of the said rate, provided he shall have delivered a certificate of such service to the clerk of the peace for the county or place wherein he shall claim such exemption, and also a list of his tenants and their places of abode, and shall sign the same; which certificate and list shall be filed at the sessions: and whenever such assessment shall be ordered to be raised within such county or place, such clerk of the peace shall certify to the high constables, the names of the persons whose certificate shall have been so filed, and the names of their tenants inserted in such list, which shall be transmitted by such high constables to the petit constables of every township or place wherein the lands of such person are situate, in order that the same may not be charged to such assessment. *f. 117.*

Clerk of the
 peace neglecting
 his duty.

Any clerk of the peace who shall refuse or wilfully neglect to receive, deliver, file, make, record, or transmit any such certificate as aforesaid, shall forfeit 100*l.* and his office, and be rendered incapable of having, receiving, or holding any office of trust, civil or military, under the crown. *f. 126.*

Penalties on the
 receivers, trea-
 surers, consta-
 bles, &c. for
 neglect of duty.

And if any receiver-general, treasurer, chief constable, petit constable, or other officer, who ought to assist in collecting the said money, shall wilfully omit or neglect, or refuse to act and assist therein according to the directions of this act; every such receiver-general or treasurer shall forfeit 200*l.*; every chief constable 50*l.*; every petit constable or other officer 20*l.* *Id.*

Solicitor of the
 treasury to pro-
 secute.

And the solicitor of the treasury shall prosecute all such justices, receivers-general, treasurers, and other officers neglecting or refusing to perform their duty as aforesaid, and in default thereof he shall forfeit 500*l.*

IX. Training and Exercise of the Militia.

At what time
 and place.

The said statute enacts, That the militia shall be trained and exercised by regiment, battalion, or independent company,

pany, once in every year for twenty-eight days together, at such time and place as shall be thought least inconvenient to the public, to be appointed by a general meeting of the lieutenantancy, to be holden as before directed, or in default of such meeting being holden, then by the lieutenant, or three deputy lieutenants authorized by his majesty to act when the lieutenant shall be absent from *Great-Britain* as aforesaid. And while the militia shall be assembled to be trained and exercised, all the provisions in any act which shall be in force for punishing mutiny and desertion, and the better payment of the army and their quarters, shall be in force with respect to the officers and private men of such militia in all cases whatsoever, but not to extend to life of limb, /s. 68.

And notice of the time and place of exercise shall be sent by the clerk of the general meetings to the chief constables, with directions to forward such notice to the constables or other officers of the several parishes or places; who shall cause it to be fixed on the doors of their churches or chapels respectively; or where a place shall have no church or chapel, on the door of the church or chapel of some parish or place thereto adjoining. And all such militiamen shall duly attend at the time and place of exercise according to such notice. /s. 69.

And every militiaman, (not rendered incapable by infirmity,) who shall not appear at the time and place appointed for annual exercise, notice having been published as aforesaid, shall be deemed a deserter; or, having joined the corps, shall desert or absent himself, and shall not be apprehended during the time of such exercise, shall in either case forfeit 20*l*; and if that sum shall not be immediately paid, one justice, before whom he shall be convicted, shall commit him to gaol for six months, or till he shall have paid such penalty. /s. 82.

But by 27 *G. 3. c. 8*, No man inrolled before *November 1, 1786*, shall be required to join the regiment, battalion or company to which he belongs, unless they shall be called out into actual service before the expiration of his term. /s. 19.

The clerks of the subdivision meetings shall, ten days at least before the time appointed for the annual exercise, cause a full and true list, specifying the name and date of the inrollment of all the men inrolled in each subdivision, to be transmitted to the commanding officer, or person appointed by him to receive the same; and shall also cause a duplicate of such list to be transmitted to the adjutant. /s. 70.

At the first meeting for annual exercise after the passing of this act, the commanding officer shall, on the first day on which

Notice of the time and place.

Penalty on deserting during the annual exercise.

Men inrolled before Nov. 1, 1786, not required to attend.

Lists of the men to be transmitted to the commanding officer.

Two thirds of the men to be balloted.

which such regiment, &c. is directed to assemble, and in the presence of such deputy-lieutenants and officers as shall be then and there assembled, cause such number of persons inrolled to be chosen by ballot out of the list returned for each subdivision, as shall be equal to two thirds of the complete number of men that ought to have been inrolled on the list of such subdivision: but where the number cannot be divided into three equal parts, the two thirds to be so chosen, shall be computed upon the next highest number that can be divided into three equal parts. *f. 71.*

The next day after the ballot the men are to be mustered.

And on the day next after such ballot, the commanding officer shall cause the regiment, &c. to be mustered, according to the subdivision for which each person shall have been inrolled to serve, and shall cause the roll of each subdivision to be publicly called; and as the name of each person shall be read over, he shall declare whether such person is, or is not balloted. *f. 72.*

And the vacancies shall be filled up.

If any vacancy shall happen by the death or discharge of any person so balloted, or by the expiration of the term of his service, the commanding officer shall, at the next meeting for annual exercise, ballot in like manner for such further number as shall be wanting to complete the full proportion of two thirds of the number of which such regiment, &c. ought to consist. *f. 73.*

Men balloted to be trained and exercised and the remainder discharged.

And the men who shall be so balloted, shall be trained and exercised for the time and in the manner before directed, during every year for which they are inrolled, and the remainder shall be discharged from further attendance during the remainder of the term appointed for annual exercise. *f. 74.*

Those discharged to remain subject to military law while they remain.

But those who are so discharged shall, while they remain in the town or place where such regiment, &c. is assembled, be subject to the same orders, regulations, penalties and punishments, as those so chosen to be trained and exercised; unless they shall be usually resident, or have their place of abode in such town or place. *f. 75.*

Men discharged, to appear at any subsequent exercise.

But the persons so discharged shall, and are required personally to appear at any subsequent time or place of exercise, of which like notice shall be given; and on default of such appearance, shall be subject to the same penalties and punishments as any other persons inrolled to serve are subject to. *f. 76.*

Persons not balloted may serve for such as are.

And if any inrolled person who shall not be balloted, shall offer himself as a volunteer to be trained and exercised, in the room of any one who shall be balloted, the commanding officer may accept him in the room of such balloted person; and he shall be trained and exercised in the same manner, and under

under the same regulations, and for the same term as if he had himself been balloted. *f. 77.*

If the commanding officer, or adjutant, or officer commanding the company to which such deserter belongs, shall receive information of the place where such deserter shall be, he may, by writing under his hand, describe him and also certify that he did not join the regiment at the time of annual exercise, or deserted during such exercise [as the case may be], and send the same by a serjeant, corporal, or drummer, to the adjutant or serjeant-major of the militia of the county or place wherein such offender is supposed to be; and the adjutant or serjeant-major, to whom such certificate shall be sent, shall direct a party of the serjeants, corporals, or drummers of the regiment to which he belongs, to assist in apprehending him, and in conveying him before some justice of the county or place where he is apprehended; and if, on confession, or oath of one witness, or the knowledge of such justice, he shall be found guilty of such offence; such adjutant or serjeant-major shall order a like party, to convey him to the head quarters of the corps of militia of the next county or place, in the way to where he belongs, and deliver him to the adjutant or serjeant-major thereof, who shall cause him to be conveyed on in like manner to the next county or place, till he shall be delivered into the custody of the adjutant of the corps to which he belongs; who shall take him before a justice to be dealt with as aforesaid. And from the time of his being so apprehended, till he is brought before such justice, he shall be subsisted at the rate of *6d. per day*, from the stock of the county or place to which he belongs; for which such justice shall make an order on the treasurer of such county or place. *f. 92.*

Manner of proceeding to apprehend deserters.

During the annual exercise, the captain or commanding officer of every company may put his men under stoppages, not exceeding *6d. a day*, for providing them with linen, stockings, and other necessaries, and for repairing any arms which may have been broken or damaged by such person's neglect; but he shall account with each man for such stoppages; and, after having deducted what he has paid, shall pay every such man the remainder (if any) before he be dismissed from such exercise. *f. 87.*

Stoppage of pay during the annual exercise.

The mayors, bailiffs, constables, and other chief magistrates and officers of cities, towns, parishes, tithings, and other places, and, in their default or absence, a justice of the peace inhabiting in or near such place, but no others, are hereby required to quarter and billet the officers and private men when they shall be called out to annual exercise,

Billeting.

Serjeants corporals, and drummers, to be billeted when the militia are not embodied.

cise, in inns, livery-stables, alehouses, victualling-houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail, on application to them made by the lieutenants, or by the colonel or commanding officer. And when the militia is not embodied, the mayors and other chief magistrates and officers as aforesaid, or in their default or absence, one justice as aforesaid, are and is required to order and provide convenient lodging in such houses, for the serjeants, corporals, and drummers, *f. 78.*

Men becoming ill.

If any militiaman shall, on his march, or at the place of annual exercise, be disabled by sickness, or otherwise, one justice, or the mayor or chief magistrate of any city or place where he shall then be, by warrant under his hand and seal, may order such relief as he shall think reasonable, to be administered to him by the officers of such parish or place; and such officers shall, on producing an account of such expences to the treasurer of the county or place for which such man shall serve (such account being allowed under the hand of one justice) be reimbursed such expences. *f. 79.*

Carriages to be provided.

When the militia shall be called out to be trained and exercised, any justice of any county, or place, being thereunto required by an order from the lieutenant, or a deputy-lieutenant, or from the colonel or other chief commissioned officer of any corps or detachment of militia, being within such county, riding, or place, to issue his warrant to the chief constables, petty constables, or other officers, of the hundreds, parishes, tithings, or places, from, through, near, or to which any such corps of militia, or detachment thereof shall be ordered to march, requiring them to provide such sufficient carriages to convey the arms, cloaths, accoutrements, powder, match, bullets, and other stores, with able men to drive such carriages, as shall be mentioned in such order; but if such carriages and men cannot be provided in such county or place, then any justice for any adjoining county or place shall, upon such order as aforesaid being shewn to him, issue his warrant within such adjoining county or place, for the purposes aforesaid, to make up such deficiency of carriages and men. *f. 80.*

One shilling per mile to be paid for a waggon with five horses, &c.

And such lieutenant, deputy-lieutenant, colonel, or other chief commissioned officer, requiring such carriages and men, shall, at the same time, pay to every such chief constable or other officer, for the use of the person who shall provide such carriages and men, 1*s.* for every mile any waggon with five horses, and any wain with six oxen, or with four oxen and

and two horses, shall travel; and *9d.* for every mile any cart with four horses shall travel; and so in proportion for carriages drawn by a less number of horses or oxen, for which such chief constable or other officer shall give a receipt. *Id.*

And such chief constables, petit constables, or other officers, shall order and appoint such persons having carriages within their respective divisions as they shall think proper, to furnish such carriages and men, according to such warrant; and they shall furnish the same accordingly, for one day's journey and no more. *Id.*

If any such chief constables, constables, or other officers, shall be at any charge for such carriages, beyond what is so received by them as aforesaid, such overplus shall be borne by every county or place where such additional expence shall be incurred, and be repaid to them without fee, by the treasurer, out of the public stock. *Id.*

All muskets for the service of the militia shall be marked with the letter M, and the name of the county or place to which they belong. *f. 85.* Muskets to be marked with an M.

And, when the militia are not embodied, the arms shall be kept in such convenient place as the colonel or (where there is no colonel) commanding officer shall direct, with the approbation of the lieutenant. *f. 90.* Arms where to be deposited.

If any militiaman shall sell, pawn, or lose any of his arms, cloaths, or accoutrements, or neglect or refuse to return them in good order, to his captain or person appointed to receive them, he shall forfeit not exceeding 3*l.*; and, if not immediately paid, the justice before whom he is convicted shall commit him to the house of correction for any time not exceeding three months, or till such penalty be paid. *Id.* Selling, pawning, losing, or refusing to deliver up cloaths, arms, &c.

Any person who shall knowingly and willingly buy, take in exchange, conceal, or otherwise receive any arms, cloaths, or accoutrements, belonging to any militiaman, on any pretence whatsoever, shall forfeit 5*l.*; and if that sum shall not be immediately paid, and he shall not have sufficient goods whereon to levy the same, the justices before whom he is convicted shall commit him to gaol for three months, or cause him to be publicly whipped; at the discretion of such justice. *f. 86.* Penalty on buying or exchanging arms, &c.

And one third part of the serjeants, corporals, and drummers, shall constantly reside within the city, town, or place where the arms are kept, and be under the command of the adiutant, who shall act, in such command, under the orders of One third of the serjeants, &c. to reside where the arms are kept.

of the colonel, or (if there is no colonel) commanding officer. *f. 91.*

Serjeants, &c.
not to be absent
without a fur-
lough.

No serjeant, corporal, or drummer, shall be absent from such city, town, or place, without a regular furlough from his commanding officer, on pain of being liable to be apprehended as a deserter. *Id.*

Adjutant not to
be absent.

And such adjutant shall not absent himself from such city, town, or place, without leave of the colonel, or (if there is no colonel) of the commanding officer. *Id.*

Serjeant-major
to act as adju-
tant.

But if such adjutant shall be absent with leave, then such serjeants, corporals, and drummers, shall be under the command of the serjeant-major, or some serjeant appointed by such adjutant, with the approbation of the colonel or commanding officer, to act as serjeant-major during the absence of such adjutant. *Id.*

Return to be
made to the
Lieutenant.

And the colonel, or commanding officer, of every regiment, battalion, &c. shall, as often as they shall be called out to annual exercise, return to his majesty's lieutenant a true state thereof; and if he shall refuse or neglect so to do, for six months after the annual exercise, he shall forfeit 100*l.* *f. 81.*

Monthly re-
turns.

The adjutant, or, in his absence, the serjeant-major, shall also make a monthly return of the true state of the serjeants, corporals, and drummers, to the lieutenant of the county, and to the commanding officer; and, in default thereof, he shall be subject to such punishment as a court-martial shall adjudge. *f. 91.*

Annual return
to be made to
the clerk of the
peace.

And the lieutenant, or three deputy-lieutenants of every county or place where the militia shall be raised, shall, on or before *December 25*, yearly, transmit a certificate to the clerk of the peace, containing an account of the names, number, and rank of the officers, and the number of private men in the militia in that year, and the time during which such militia has been trained and exercised; and every such clerk of the peace shall deliver such certificate to the justices, at their general quarter-sessions next after *December 25*, yearly, on the day on which such sessions shall be opened, and it shall be filed among the records of such sessions. *f. 116.*

Where no re-
turn is made.

But if the clerk of the peace shall not receive such certificate as aforesaid, he shall certify the same under his hand and seal to the justices so assembled, and the same shall be filed in like manner. *Id.*

X. Militia drawn out into actual Service.

In case of invasion, or imminent danger thereof, and in all cases of rebellion and insurrection, it shall be lawful for his majesty (the occasion being first communicated to parliament, if then sitting, or declared in council, and notified by proclamation, if no parliament be then sitting or in being) to order his lieutenants, or on their death, removal, or absence from their respective counties, ridings, or places, three deputy-lieutenants, with all convenient speed, to draw out and embody all the regiments, battalions, and independent companies, of their respective counties, ridings, or places, herein before appointed to be raised and trained, or so many of them as he shall judge necessary, in such manner as shall be best adapted to the circumstances of the danger. *f. 95.*

Militia to be drawn out in case of invasion or rebellion.

And if, when the militia shall be so drawn out and embodied, the parliament shall then be separated by such adjournment or prorogation as will not expire within fourteen days, his majesty may and shall issue a proclamation for the meeting of the parliament within fourteen days, which shall accordingly meet and sit upon such day as shall be appointed by such proclamation, and continue to sit and act in like manner, to all intents and purposes as if it had stood adjourned or prorogued to the same day. *f. 97.*

Parliament to meet in fourteen days.

And his majesty may put the said forces under the command of such general officers as he shall appoint, and direct them to be led by their respective officers into any part of this kingdom, in order to repel or prevent any such invasion, and suppress any rebellion or insurrection within the same. *Id.*

Militia to be put under the command of general officers.

But neither the whole, nor any part, of the militia, shall on any account be taken, or ordered to go out of Great-Britain. *f. 96.*

But not to go out of the kingdom.

And the officers, drummers, and private men, shall, from the time of their being drawn out and embodied as aforesaid, till they shall be returned to their parishes or places of abode, remain under the command of such general officers; and, during such time, all the provisions contained in any act of parliament in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, shall be in force with respect to the militia in all cases whatsoever. *f. 95.*

Militiamen to be subject to the acts against mutiny and desertion.

And when the militia shall be ordered out into actual service, the receiver-general of the land-tax for the county or place shall pay to the captain or other commanding officer, of every company so ordered out, one guinea for the use of every private man belonging to his company, and also the same sum for every recruit, as soon as may be, after he shall have

Men to have one guinea each when ordered out.

have joined his company, while out in actual service : and the money so received by such captain or commanding officer (or such part thereof as he shall think proper) shall be laid out as he shall think most advantageous for each man ; and, before he is discharged, such captain or commanding officer shall account to each man respectively concerning the application of the money, and pay the remainder (if any) to such militiaman. *f. 101.*

Notice to be given, in writing, for raising the men.

The lieutenant, or (on his death or removal, or in his absence from his county, &c.) any three deputy-lieutenants, to whom such order as aforesaid shall be directed, shall issue their orders to the chief constables, or other officers of the several hundreds, rapes, &c. within their respective counties, &c. with directions to forward the same immediately to the constables, or other officers, of the several parishes, tithings, and places, within their respective divisions ; and such constables, or other officers, shall forthwith cause notice, in writing, to be given to the several militiamen, or left at their usual places of abode, to attend at the time and place mentioned in such order. *f. 98.*

Punishment on not appearing.

And any militiaman so ordered to be embodied (not being rendered incapable of serving by any infirmity) who shall not appear and march in pursuance of such order, shall be liable to be apprehended and punished as a deserter. *Id.*

Concealing militiaman.

Any person who shall harbour or conceal a militiaman, when ordered into actual service, knowing him to be a militiaman, shall forfeit 5*l.* *Id.*

Additional number of serjeants, &c.

And an additional number of serjeants, corporals, and drummers, shall be appointed ; so that there may be one serjeant and one corporal to every twenty men, and one additional drummer to each company. *f. 64.*

To have the same pay as other forces.

From the date of the king's warrant for drawing out the militia into actual service, the officers and men shall have the same pay as the officers and private men of his majesty's other regiments of foot. *f. 103.*

Half the price of volunteers to be paid by the township, &c.

If any person not possessed of an estate in land, goods, or money, of the clear value of 500*l.* and who shall make oath thereof, shall be ballotted to serve in the militia when drawn or ordered out for actual service, and such person shall be sworn and inrolled ; the churchwardens or overseers of the place for which he serves, shall, on receiving an order under the hands of two deputy-lieutenants, acting within the subdivision wherein such parish or place is situate, pay to every such person so chosen by lot, any sum not exceeding what such deputy-lieutenants shall adjudge to be, as near as may be, one half of the current price then paid for volunteers

teers

teers in the county or place where such person was so chosen; which sum shall be taken out of the poor-rate to be made (as aforesaid) for providing volunteers, or, if no volunteer shall be provided, then out of a rate to be made and collected agreeable to the poor-rate. *f. 41.*

And any churchwarden or overseer, who shall not pay such money on demand, and producing such order, shall forfeit 5/; half to the person balloted, in lieu of the sum ordered to be paid him as aforesaid. *Id.*

Penalty on not paying on demand.

But if such man, chosen by ballot and serving for himself, shall, within one month after his inrollment, be disapproved and discharged by the commanding officer, such sum shall not be paid to him, but to the next person balloted in his stead in manner before mentioned; and if any substitute shall be disapproved and discharged in manner aforesaid, then no such sum shall be paid to the man so balloted, unless he shall serve himself, or find another substitute who shall be approved by such commanding officer as aforesaid. *Id.*

Exception, if the man shall be discharged within a month.

When a body of militia shall be embodied, and absent from the county or place to which it belongs, the commanding officer shall apply to every man whose time shall be within four months of expiring, and whom he shall suppose fit to serve, and enquire if he is willing to continue in the service for such term as any man who should be then balloted would be subject to, and for what price; and shall on the first of *January, March, May, July, September, and November*, respectively, or as soon after as conveniently may be, transmit to the clerk of the general meetings, a list of those whom he shall find willing to continue in the service, and for what prices. And such list shall be signed by every such militiaman, and shall be in the following form:

Return to be made of those men who are willing to continue their service.

viz.
 Dated the — day of —

Name of the county.	Names of the men actually serving.	If substitutes for whom they serve.	Of the parish of	In the hundred of	Time of service expires on the	Sum for which they engage to serve.	Signature of consent.
	A. B. E. F.	C. D. L. M.	P. Q.	H. I.			A. B. C. D.

And the signing of the said roll shall be binding upon those who sign it, to all intents and purposes whatsoever. *f. 46.*

Signing the roll shall be binding.

Bounty on pro-
longing the
term of service.

When the term of service of any person, so balloted and inrolled, shall be so prolonged beyond the term of five years, such receiver-general shall pay to the captain or commanding officer of each company, one guinea for every person whose service shall be so prolonged; and, if such term shall be prolonged for more than three years, then, at the end of three years, he shall pay the further sum of one guinea; and so on, at the expiration of every additional term of three years, the like further sum of one guinea; to be laid out and accounted for by such commanding officer as aforesaid.

f. 102.

Court-martial
to consist of
militia-officers.

Officers of the militia shall not sit in any court-martial on the trial of any officer or soldier in any of his majesty's other forces; nor shall an officer in his majesty's other forces sit in a court-martial on the trial of any officer or private man in the militia. *f. 99.*

How regulated
when disem-
bodied.

When such militia shall be disembodied and dismissed to return to their respective places of abode, they shall only be subject to such orders, directions, and engagements, as they were subject to under the provisions of this act, before they were drawn out into actual service. *f. 104.*

XI. General Power of enforcing the Execution of this Act.

Exclusive of the particular penalties for certain offences, there are several general directions for enforcing the execution of this act, which are as follow:

General direc-
tions.

Two deputy-lieutenants, within any subdivision, are authorised, from time to time, to issue their order or warrant, under their hands and seals, requiring the attendance of any constable or other officer, of any parish, tithing, or place, within such subdivision, at the time and place in such order or warrant to be expressed; and if any such officer shall not appear according to such order, or if any chief constable or other officer of any hundred, rape, &c. or any such constable or other officer of such parish, tithing, or place, shall neglect to return any such lists, or to comply with such orders as he shall receive from such deputy-lieutenants in pursuance of this act, or shall in making such return be guilty of any fraud, wilful partiality, or gross neglect in his duty, such deputy-lieutenants are required to commit such offender to gaol for one month, or, at their discretion, may fine him not exceeding 5*l.* nor less than 40*s.* *f. 30.*

And

And the provisions made by 24 G. 2. c. 44, for rendering justices safer in the execution of their office, shall extend to all lieutenants and deputy-lieutenants acting in the execution of this or any other act relating to the militia, as fully and effectually as the same extend to justices in the execution of their office. *f. 127.*

In all cases, in the execution of this act, when any thing is directed to be enquired of, or examined into, on the oath of any witness, before the lieutenant, or any deputy-lieutenant or justice; such lieutenant, deputy-lieutenant, or justice, is authorised to administer such oaths. *f. 52.*

All fines, penalties, and forfeitures exceeding 20*l.* by this act imposed, shall be recovered in the courts at *Westminster*; if not exceeding that sum, they shall, on proof on oath, before one justice, be levied by distress, and for want of sufficient distress, such justice shall (in all cases where no particular times of commitment is herein before directed) commit such offender to the common gaol for any time not exceeding three months. *f. 132.*

The money arising from such fines, penalties, and forfeitures, the application thereof not being otherwise particularly directed, shall be paid to the clerk, or (where there is no clerk) to the commanding officer of the regiment or battalion, and be made part of the public stock. *Id.*

And the several towns and places in the act mentioned, and deemed to be situate within, and part of the several counties, ridings, and places aforesaid, for the purposes of this act, shall be subject to the jurisdiction and authority of the lieutenants, deputy-lieutenants, justices, and other officers of the respective counties, ridings, and places, within which such towns and places are hereby deemed to be situate. *f. 108.*

No order or conviction shall be removed by *certiorari*, nor execution or other proceedings upon such order be superseded thereby. *f. 133.*

If any suit shall be commenced against any one, for any thing done in pursuance of this act, the action shall be laid in the proper county, within six months; and the defendant may plead the general issue, and if he prevails shall have treble costs. *f. 134.*

XII. Exceptions respecting particular Places.

His majesty's lieutenants commissioned for the militia of the city of *London*, shall continue to list and levy the trained bands and auxiliaries of such city as heretofore. *f. 110.*

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And

Indemnity of lieutenants and deputy-lieutenants.

Who may administer oaths.

General levying of fines and forfeitures.

Application thereof.

Jurisdiction.

Certiorari.

Treble costs.

The city of London may levy the trained bands.

The tower-hamlets to train and discipline their militia, according to the 13 & 14 C. 2.

And the constable of the Tower, or lieutenant of the Tower-hamlets, for the time being, may, from time to time, appoint his deputy-lieutenants, and give commissions to a proper number of officers to train and discipline the militia to be raised within the said division, pursuant to the statute of 13 & 14 C. 2. and form the same into two regiments of eight companies each, as the said constable or lieutenant has used to do: and in order to defray the necessary charge of trophies and other incident expences of the militia of the same division, his majesty's said constable or lieutenant may continue to raise in every year the proportion of a fourth part of one month's assessment of trophy money, within the said division or hamlets, in such manner as he has used to do by the said act of the 13 & 14 C. 2.

Id. §. III.

In the absence of the lieutenant, the deputy-lieutenants may act.

And when such lieutenant shall be out of the kingdom, the deputy-lieutenants, or the major part of them, assembled at a public meeting to be called for that purpose, may do all things relating to the said militia, which might have been done by the said lieutenant; and no commission, warrant, or appointment, granted to any deputy-lieutenant or other person, concerning the militia of the said hamlets, shall be void by the death or removal of the lieutenant.

§. III.

Treasurer appointed to receive and pay money.

And the said constable of the Tower, or lieutenant of the Tower-hamlets, shall appoint a treasurer of the said trophy money, for receiving and paying such monies as shall be levied by the said act of 13 & 14 C. 2. who shall yearly account in writing and upon oath for the same, to the said constable or lieutenant, or his deputy-lieutenants, or any three of them; and such account shall be certified to the justices for the said division at their next sessions. And the said constable or lieutenant shall not issue out warrants for raising any trophy money, till the justices at such sessions shall have examined, stated, and allowed the accounts of the trophy money raised for the preceding year, and certify the same under the hands and seals of four such justices; unless where it shall appear to such justices, that by reason of the death of such treasurer or otherwise, such accounts cannot be passed. §. III.

The cinque ports.

And the lord warden of the cinque ports, two ancient towns, and their members, and, in his absence, his lieutenant or lieutenants, shall put in execution within the same all the powers and authorities granted by this act, as his majesty's lieutenants of counties and their deputy-lieutenants may do; and may keep up and continue the usual number

number of soldiers in the said ports, towns, and members, unless he or they find cause to lessen the same: and the militia of the said ports, towns, and members, shall remain separate from the militia of the several counties within which the said ports, towns, and members are situate. *s.* 114.

In *Suffex* and *East-Kent*, the churchwardens and overseers of the poor of the several parishes shall execute the powers given elsewhere to the constables and other peace-officers. *s.* 115.

Nothing, however, in this act shall extend to the tinnery in *Devon* and *Cornwall*; but the lord warden of the stannaries for the time being, by virtue of his majesty's commission in that behalf, and those which he shall commissionate and authorise under him, shall use the like powers, and array, assess, arm, muster, and exercise the said tinnery as heretofore, and according to the ancient privileges and customs of the stannaries. *s.* 109.

The inhabitants of that part of the parish of *Maker* which lies in the county of *Cornwall*, shall serve in the militia of *Cornwall*. *s.* 107.

When the number of persons which the *Isle of Wight* is to furnish to the militia of the county of *Southampton* shall have been appointed, the governor of the said island shall appoint the officers of the militia there, as his majesty's lieutenants of counties may do, and shall appoint five or more deputies to act with him; which deputies and officers shall be qualified and act as is prescribed with respect to like officers in *Wales*. And the militia of the said island shall be raised as the militia of the county of *Southampton*, and be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant-governor, and deputies shall order the training and exercising the militia within the said island, as the lieutenants and deputy-lieutenants may do elsewhere. *s.* 106.

All the provisions made with respect to the county of *Northumberland*, and the militia thereof, shall be in force with respect to the town of *Berwick upon Tweed*, except as to the particulars here expressed and otherwise provided for; and out of the persons returned in the lists for the said town a number of private militiamen shall be chosen by lot to serve for it, in the same proportion with the private militiamen appointed to serve in their respective hundreds, wards, and other divisions within the said county of *Northumberland*: and if persons can be found within the said town and liberties thereof, with the qualifications required for deputy-lieutenants and officers within cities and towns which are

counties of themselves; the chief magistrate of *Berwick* shall appoint five deputy lieutenants, and such number of officers of the militia as shall be proportionable to the number of militiamen which the said town shall raise, as their quota towards the militia of the county of *Northumberland*. And the said militia shall annually join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed the militia of the county of *Northumberland* for the purposes aforesaid. *f. 105.*

Craike in the
county of *Dur-*
ham.

The inhabitants of the constabulary of *Craike*, a parcel of the county of *Durham* surrounded by the North-Riding of *York*, shall serve in the militia of the said North-Riding. *f. 107.*

Filey.

The inhabitants of the township of *Filey* shall serve in the militia of the East-Riding of the county of *York*. *f. 107.*

Stamford Ba-
ron.

The inhabitants of the parish of *St. Martin*, called *Stamford Baron*, in the suburbs of the borough and town of *Stamford*, south of the waters there, called *Welland*, shall serve in the militia of the county of *Lincoln*. *Id.*

Wokingham.

The inhabitants of the town and parish of *Wokingham* shall serve in the militia of the county of *Berks*. *Id.*

Threapwood.

And the inhabitants of *Threapwood* shall serve in the militia in the county of *Flint*, and be trained and exercised with the militia of the parish of *Wrothenbury*. *Id.*

XIII. Privileges, Indulgences, and Exemptions of Militiamen.

Officers on half-
pay.

No officer entitled to half-pay shall forfeit such half-pay during the time he shall serve as lieutenant, ensign, adjutant, battalion clerk, paymaster, quartermaster, or surgeon, in the militia, but the same shall nevertheless continue; and, instead of the oath directed by the act for punishing mutiny and desertion, &c. to be taken by such officer, he shall take the oath following:

Oath to be ta-
ken by an officer
on half pay.

"I, *A. B.* do swear, that I had not, between the
"any place or employment of profit, civil or military, un-
"der his majesty, besides my allowance of half-pay as a re-
"duced in late regiment of save
"and except my pay as lieutenant, &c. [as the case may
"be] for serving in a regiment of militia."

The taking of which oath, without any other, shall be sufficient to entitle such person to receive his half-pay. *f. 63.*

No

No officer in the militia shall be compelled to serve the office of sheriff. *f.* 128. Officer not to serve sheriff.

No serjeant, corporal, drummer, or private man of the militia, shall from the time of his inrollment to his discharge, be compelled to serve as a peace or parish officer, *f.* 130. Exempted from parish offices.

Nor to perform any highway duty usually called statute work. *Id.*

Nor to serve in any of his majesty's sea-forces. *Id.*

And no officer or private man in the militia, shall be liable to any penalty or punishment on account of his absence, during the time he shall be going to vote at any election of a member to serve in parliament, or returning from such election. *f.* 129. Officer or men may go to vote at elections.

And every person, being a married man, who shall have served in the militia when drawn out into actual service, may set up and exercise any trade in any town or place within Great-Britain, without any molestation on account of exercising such trade, and with and under the same provisions, regulations, and exceptions, as any mariner or soldier may do by the 22 G. 2. c. 44. *f.* 131. After actual service may set up trades in any town.

And no such militiaman shall be liable to be removed out of any town or place, till he shall become chargeable to the parish. *Id.*

Any person who shall have faithfully served as a serjeant in the militia for fifteen years, or as a corporal or drummer for twenty years, and shall be discharged on account of age and infirmity, shall, on the recommendation of the commanding officer of the regiment, &c. and the lieutenant and two deputy lieutenants of the county or place to which such regiment, &c. belongs, (or on the death or removal, or in the absence of the lieutenant, by the commanding officer and three deputy lieutenants) be entitled to examination at the *Chelsea board*, and be capable of being placed on the pension of 5*d.* per day, if the board shall judge him deserving thereof. *f.* 67. When capable of a pension from Chelsea hospital.

But no person appointed a serjeant in the militia shall be entitled to such recompence, till he shall have served in the militia, or in the army and militia, for twenty years.

And any non-commissioned officer or private man of the militia, who shall be maimed or wounded in actual service, shall be equally entitled to the benefit of *Chelsea-Hospital* with any non-commissioned officer or private man belonging to his majesty's other forces. *f.* 103.

Moreover, if any person, being a serjeant on the establishment of *Chelsea-Hospital* at the allowance at 12*d.* a day, shall

shall be appointed to serve in the militia, he may receive the said allowance, together with his pay from such militia. *f. 67.*

XIV. Punishment for Desertion or Disobedience of Orders.

If any serjeant, corporal, or drummer, shall desert from the regiment or battalion to which he belongs, any constable or other officer of the place where a person reasonably suspected to be a deserter shall be found, may cause him to be apprehended and taken before a neighbouring justice to be examined; and if on confession, or oath of one witness, or knowledge of such justice, he shall appear to be such deserter, the said justice may commit him to the county gaol, or house of correction, or other public prison in or near the place where he shall be apprehended, there to remain till he shall be demanded by some person authorised to receive him, as herein after directed. *f. 92.*

Method pointed out by the statute, of recovering such deserters.

And such justice shall transmit an account thereof to the clerk of the general meetings of the county or place to which he belongs; and the keeper of such prison shall receive the full subsistence of such deserter for his maintenance while he shall continue in his custody, but shall have no fee or reward on account of his imprisonment. : and the clerk of the general meetings, receiving such account, shall immediately transmit a copy thereof to the colonel or commanding officer of the regiment, &c. of his county or riding, and also to the adjutant or other officer commanding the serjeants, corporals, and drummers of the regiment, &c; and where there are more than one regiment or battalion, such clerk shall send a copy to all the colonels or commanding officers, and also to all the adjutants or officers commanding serjeants, &c. And the colonel or commanding officer of the regiment, &c. to which such deserter belongs, or the adjutant or officer commanding such serjeants, &c. shall, immediately on receiving such copy, send any serjeant, corporal, or drummer, or party of serjeants, &c. to the place where he is so confined, and shall also send an order under his hand and seal, to the keeper of such prison, requiring him to deliver such deserter to the persons therein named: and the serjeant, corporal, or drummer (if one only is sent on such duty), to whom he is ordered to be delivered, shall aply.

apply to the adjutant or serjeant-major of the regiment, &c. of the county, &c. where such deserter shall be confined, who shall order a sufficient party of the serjeants, corporals, or drummers under his command, to assist in conveying him to the adjutant or serjeant-major of the regiment, &c. to which he belongs, in the same manner as directed for conveying private militiamen not joining the annual exercise; and such adjutant or serjeant-major shall take such deserter before a justice of the county, &c. to which he belongs, who shall cause him to be conveyed to the common gaol, house of correction, or other public prison of the county, &c. there to remain till the regiment or battalion to which he belongs shall be embodied for annual exercise or actual service (which shall first happen); and the colonel or commanding officer shall then issue an order under his hand and seal to the keeper of the prison where he shall be confined, requiring him to deliver such deserter to the person therein named, which he shall do accordingly. *Id.*

And the colonel or commanding officer shall summon and hold a court martial for the trial of such deserter, in such manner, and with the same authority as shall be given by any act which shall be then in force *for punishing mutiny and desertion*, &c; and if upon such trial, he shall be found guilty, he shall be punished as such court martial shall think fit, according to the powers and provisions of such act, and of the articles of war; but not to extend to life or limb. *Id.*

To be tried by a court martial.

And all serjeants, corporals, and drummers, while employed in such duty as aforesaid, shall be billeted as serjeants, corporals, or drummers belonging to the other forces employed in apprehending and conveying deserters, are to be billeted. *Id.*

Serjeants, &c. when employed in conveying deserters, to be billeted.

And the justice, before whom a deserter shall be convicted, shall issue his warrant to the clerk of the regiment or battalion to which such deserter shall belong, or (where there is no clerk) to the commanding officer, requiring such clerk or commanding officer to pay 20s. out of the regimental stock to the person who apprehended such deserter, which such clerk or commanding officer is required to pay accordingly upon demand. *f. 93.*

Reward for apprehending deserters.

Any person who shall harbour, conceal, or assist any deserter, knowing him so to be, shall forfeit 5*l.* *f. 94.*

Concealing deserters.

All gaolers, and keepers of prisons, when required by such serjeants, corporals, or drummers, employed in conveying any deserters to the regiment or battalion to which they belong, shall receive into their custody and confine such offenders

Gaolers to receive deserters.

offenders

Adjutants, &c.
to be subject to
the mutiny act;
and serjeants,
&c. to be tried
by a court mar-
tial.

offenders for such time as shall be required, not exceeding twenty-four hours; on pain of forfeiting 20s. *Id.*

And every adjutant, serjeant-major, serjeant, corporal, drum-major, and drummer of the militia, shall be subject to the acts for punishing mutiny and desertion, and for the payment of the army and their quarters, and to the articles of war, under the command of the colonel or commanding officer, who may direct the holding of courts martial, whenever the regiment or battalion shall be embodied for annual exercise, for the trial of any serjeant-major, serjeant, corporal, drum-major, or drummer of such regiment or battalion, for any offence committed during the time that such regiment, &c. was not embodied; but so that no punishment shall extend to life or limb. *f. 88.*

And by sentence of a court martial, any serjeant or corporal may be reduced to a private soldier of the militia, to serve as such any time not exceeding fifteen months; after which time, if not regularly appointed to the rank of a non-commissioned officer, he shall be discharged from the service. *f. 89.*

XV. Cloathing and Pay.

Four months'
pay in advance.

By the 30 G. 3. c. 9, (there being an annual act for the cloathing and pay of the militia) it is enacted, That in every place where the militia shall be raised, the receiver-general of the land-tax for such place shall issue and pay as follows:—For the pay of the said militia for four calendar months in advance, at the rate of 6s. a day for each adjutant, where an adjutant is appointed; 1s. for each serjeant, with the addition of 2s. 6d. a week for each serjeant-major, where a serjeant-major is appointed; 6d. a day for each drummer, with the addition of 6d. a day for each drum-major, where a drum-major is appointed; and at the rate of 8d. a day for each corporal; and at the rate of 4d. a month for each private man and drummer for defraying *contingent expences*; one penny whereof to be applied to the hospital expences when they are out upon their annual exercise; and for half a year's salary for the clerk of the regiment or battalion at the rate of 50l. a year; and to the clerk of the general meetings, at the rate of 5l. 5s. for each meeting; and to the several clerks of the subdivision meetings, at the rate of 1l. 1s. for each meeting; and also for cloathing, after the rate of 3l. 10s. for each serjeant, and 2l. for each drummer, with the addition of 1l. for each serjeant-major and drummer.

drum-major; and 2*l*. for each corporal, where such serjeants, drummers, serjeants-majors, drum-majors, and corporals, have not been cloathed within two years, and with respect to the private militiamen, where they have not been cloathed within five years, at the rate of 1*l*. 12*s*. for each private man. *f. 1.*

And all such sums of money aforesaid (except what shall be due to the clerks of the meetings, and what shall be due for cloathing) shall, where the militia has never been embodied, be paid by the receiver-general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of his majesty's lieutenant; and where the militia has been embodied, into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of the colonel, or, where there is no colonel, of the commanding officer, notwithstanding such militia shall have been disembodied; and where the militia shall be formed into independent companies, such sums shall be paid by the receiver-general into the hands of the respective captain of such independent company, or to such person as such captain shall authorize to receive the same. *f. 2.*

To be paid by
the receiver
general.

And the said receiver-general shall also, within fourteen days after the expiration of the third calendar month from the time of the said first payment, make a second payment for four calendar months in advance; and within fourteen days after the expiration of the third calendar month from the time of the said second payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk: and the receipt of such clerk, and of such captain of an independent company, or of the person authorised by him as aforesaid to receive the same, shall be a sufficient discharge to the receiver general. *Id.*

Second and
third payment.

And the clerk of the regiment or battalion shall forthwith, after the receipt of such sums as aforesaid, pay or cause to be paid one calendar month's pay in advance to the adjutant; and to the captain or commanding officer of each company two months pay in advance, for the serjeants, drummers, and corporals; and also to the commanding officer of the company to which the serjeant-major and drum-major shall belong, two months pay in advance for such serjeant and drum-major; and so from time to time so long as any money on that account shall remain in his hands. *f. 3.*

Which pay, every such captain or commanding officer is hereby

hereby required to distribute to each person belonging to his company, as it shall become due ; and the captain of every independent company is hereby required to distribute to each person belonging to his company, such money as he shall receive for pay of his company ; and such captain or officer commanding shall, once in every year, give in to the clerk of the regiment or battalion (or, if captain of an independent company, to the receiver-general) an account of the several payments he shall have made in pursuance of this act, according to the following form :

County of	Dr.	Per Contra,	Cr.
To cash received of Mr. } regimental or } battalion clerk, or re- } ceiver-general [as the } case shall be] for two } months pay in ad- } vance, — — — }		Paid serjeant for } days pay, from the } of to the of } following — — — } Ditto as serjeant-major (if } one in the company) } Paid serjeant for } days pay, from the } of to the of } following — — — } Paid drummer } days, at sixpence, from } the of to the } of following — } Ditto as drum-major (if } one in the company) } Paid drummer } days, from the of } to the of following } Paid corporal days } from the of to the } of following }	

And pay back
the surplus
monies in his
hands.

and shall pay back to the said clerk, or to the receiver-general (as the case shall be), the surplus (if any) of the money by him from time to time received, and then remaining in his hands, /s. 3.

On discharge of
serjeants or
drummers as
unfit for service,
no pay to be
issued till others
are appointed.

Provided, That in case the commanding officer of any regiment, battalion, or independant company, shall certify in writing, to the clerk of the same, that he has discharged any serjeant or drummer as unfit for the service ; that in such case, no pay be issued for the person so discharged until another be duly appointed by him ; and that no payment

be

be made to any serjeant or drummer who has been so discharged, or who has not previously been approved of by the commanding officer, in case of vacancy by death, or otherwise. / 4.

And the clerk of each regiment or battalion out of the money hereby directed to be issued and paid to him for defraying the contingent expences, shall yearly pay to the colonel or officer commanding such regiment or battalion, one penny a month for each private man and drummer, for defraying the hospital expences during the time of the men's being absent from home upon account of their annual exercise; and shall from time to time issue out and pay such sums of money as may be necessary for the repair of arms, and the carriage and removal thereof, upon an order in writing, signed by the colonel or commanding officer; and after payment of such sums as shall be drawn on him by such colonel or commanding officer, he shall yearly make up an account of all such money, and the expenditure thereof, and of the balance remaining in his hands; which said balance shall form a stock purse for the use of the regiment, and transmit the same to the colonel or commanding officer, to be by him examined, allowed, and signed; and the account so allowed and signed shall be the proper voucher and acquittal of such clerk for the application and disposal of such money.

Regimental clerk to pay the commanding officer, Id. a month for each private man and drummer, for defraying hospital expences. and money for repairing arms, &c.

and to account annually to the commanding officer.

/ 5.

And the money hereby directed to be issued for the contingent expences of each independant company of militia, shall be in like manner applied to the particular use of such respective independant company by the captain thereof; and shall yearly be in like manner accounted for to the receiver-general; whose allowance of such account shall be the proper voucher for the expenditure and disposition thereof. / 6.

Money allowed for contingent expences of independant companies.

And the said regimental or battalion clerk may and shall retain to his own use, out of the money so by him received, such further sums as shall complete the allowance hereinbefore made for his salary. / 7.

Clerk to retain money in his hands for his own salary.

And whenever his majesty's lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise for the militia, they shall, as soon as may be, certify the same to the receiver-general, specifying the number of men, and the number of days they are to be absent from home on account of such exercise, and not exceeding in the whole twenty-eight days; and such receiver-general, within fourteen days after the receipt of such certificate, shall pay to the clerk of the regiment or battalion. at the rate of seven shillings and sixpence per day for the captain of each company,

Lieutenant, or three deputy lieutenants, to certify to the receiver-general the days of exercise, &c who is to pay to the regimental clerks, at the rates herein specified, for the officers and men while at annual exercise.

and at the rate of three shillings and sixpence *per* day for each lieutenant, and of three shillings *per* day for each ensign; and also at the rate of one shilling *per* day for each private man balloted, to be trained and exercised, for the number of days such officers and men shall be absent from home on account of such exercise; and also at the rate of one shilling *per* day for each private man who shall attend the place of annual exercise, but who shall not have been so chosen by ballot to be trained and exercised, for any number of days not exceeding five, during which such men shall be absent from home on account of their attendance at such place of exercise; and in such counties where there shall be independant companies only, the receiver-general shall pay to the captains of the independant companies, at the rate of seven shillings and sixpence *per* day for each captain, three shillings and sixpence *per* day for each lieutenant, and three shillings *per* day for each ensign; and also at the rate of one shilling *per* day for each private man who shall have been chosen by ballot to be trained and exercised, for the number of days such officers and men shall be absent from home on account of such exercise, not exceeding in the whole twenty-eight days; and also at the rate of one shilling *per* day for each private man who shall attend the place of annual exercise, but who shall not have been so chosen by ballot to be trained and exercised, for any number of days not exceeding five, during which such men shall be absent from home on account of their attendance at such place of exercise; and the said regimental or battalion clerks are hereby required forthwith to pay to each captain of the said regiments or battalions the proportion of pay belonging to each captain, and also the pay belonging to their respective companies. / 8.

Captains of companies to make up accounts of the money they receive, &c. on account of such exercise, &c.

And the captain of each company shall make up an account of all monies received and paid by him on account of such exercise, according to the following form:

County of	Dr.	Per contra,	Cr.
To cash received of the regimental or bat- talion clerk, or receiver-general <i>[as the case shall be]</i> for days pay of men		By my pay as captain Paid lieutenant Paid ensign Paid militiamen } days } Paid militiamen } days, for their } attendance at the place } of exercise }	
			Which

Which account shall be signed by such captain, and countersigned by the commanding officer; and the said captain shall, within ten days after the time such exercise is finished, deliver such account, and pay the balance, if any, to the regimental or battalion clerk, or, if captain of an independant company, to the receiver-general. /s. 9.

Provided, That where any regiment, battalion, or independant company of militia, shall be embodied or called out into actual service, and thereby the officers and private men shall be entitled to the same pay as the officers and private men in his majesty's other regiments of foot receive; all pay from the receiver-general, whether to the adjutants, sergeants, private militiamen, or others, and all money allowed as aforesaid for contingent expences, and also the allowance to the clerk of such regiment or battalion, shall, during such time of actual service, cease, and not be paid. /s. 10.

During the time the troops are embodied, and called out into actual service, and receive pay as the king's other forces, all pay and allowance from the receiver-general is to cease.

And the receiver-general shall pay to the clerk of the general meetings his allowance, at the rate of five pounds and five shillings for each meeting, on his producing an order for that purpose from his majesty's lieutenant, or from three deputy-lieutenants, assembled at some general meeting or meetings; and shall also pay to each of the clerks of the subdivision meetings their several allowances, at the rate of one pound and one shilling for each meeting, upon their producing an order from one or more deputy-lieutenant or deputy-lieutenants, in the several subdivision meetings.

Receivers-general to pay the allowances to clerks of the general meetings, and to the clerks of the subdivision meetings.

/s. 11.

Provided always, That the clerk of each regiment or battalion shall give security to the receiver-general, by bond to his majesty, in the penalty of one half the sum required for the whole year's charge of the regiment or battalion of militia to which such clerk shall belong, for duly answering and paying such sums as he shall from time to time receive, and for duly accounting for the same, and for performance of the trust hereby in him reposed; which bond shall be lodged in the hands of the receiver, who, if the said regimental or battalion clerk shall not duly perform the conditions, shall forthwith put the said bond in suit, in the name of his majesty, his heirs and successors. /s. 12.

Regimental and battalion clerks to give security.

And the clerk of every regiment or battalion, and the captain of every independant company, shall, between the twenty-fifth of *March* and the twenty-fourth of *June* 1790, deliver to the receiver-general a fair account in writing, of all money by him received and disbursed for the service of the preceding year, with proper vouchers for the same; and shall pay back to the said receiver-general any surplus of such money

Clerks and captains of independant companies are to deliver in accounts of their receipts and disbursements.

money that shall then be in his hands; which said account, signed by such clerk, or by such captain of an independant company respectively, shall be transmitted by the said receiver-general into the office of the proper auditor of his majesty's revenue. *s. 13.*

Costs, &c where
to be recovered.

Provided, That all penalties, costs of suit, and all sums of money for which any person is by this act made answerable, may and shall be recovered in any of his majesty's courts of record at *Westminster s. 14.*

Provided also, That no fee or gratuity shall be given or paid for any warrant, or sum of money issued in relation to or in pursuance of this act. *s. 15.*

Persons on half
pay, or entitled
to an allowance
as having served
in the reduced
horse guards,
&c may, though
serving in the
militia, receive
thesame, on tak-
ing the follow-
ing oath.

And any person on half pay, or being intituled to any allowance as having served in any of the two troops of horse guards, or regiment of horse reduced, and serving in the militia, is hereby empowered to receive the subsistence-money by this act directed to be paid to captains, lieutenants, or ensigns; and the receiving and taking such subsistence-money shall not be deemed a receiving pay, so as to prevent such person on half pay, or being intituled to any such allowance, from receiving his half pay, or such allowance; and such person shall take the following oath before some justice of the peace, who is hereby empowered to administer it:

The oath.

" I *A. B.* do swear, that I had not, between the
" any place or employment of profit, civil or mi-
" litary, under his majesty, besides my allowance of half pay
" as a reduced in late regiment of
" (or allowance as in
" late troop of horse guards, or regiment of
" horse reduced), save and except my subsistence as a captain,
" lieutenant, or ensign, [*as the case may be*] for serving in the
" militia of the county of "

and the taking the said oath shall be sufficient to intitle such person to receive his half pay, or the said allowance, without taking any other oath. *s. 16.*

And the receiver-general, as soon as he shall receive a warrant under the hand of the colonel or commanding officer of their respective regiments or battalions, certifying the receipt of the cloathing, and an order from the said colonel or commanding officer for the money due on account of the same, payable to the person who furnished the said cloathing, shall pay the sum mentioned in such order to the person intituled to receive it; and such warrant and order, with

with the receipt of the person receiving the said money, shall be a sufficient discharge to such receiver-general. /. 17.

And if any regiment, battalion, or independent company, shall cease and determine during the continuance of this act, three shillings *per diem* shall be paid to such person as has actually served as adjutant to such regiment, battalion, or independent company, from the time such regiment, battalion, or independent company, shall cease, to the 25th of March 1791. s. 18.

If any regiment &c shall cease, 3s. per diem, is to be paid to the adjutant from such time, to March 25, 1791.

Mill.

THE toll of a mill, says lord chief-justice *Holt*, must be regulated by custom; and if the miller takes more than the custom warrants, it is extortion: yet where it is a new mill, the miller is not restrained to any certain toll; but persons who employ the miller must comply with his demands, and whatever he takes is not extortion, because it is the voluntary agreement of the parties. *L. Raym.* 149.

Custom regulates the toll of an old mill.

The tenants, in some places, are bound to have their corn ground at the lord's mill. As in the case of *Hix and Gardner, H. 11 Jac.* In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom, and this was adjudged a good custom: and suit to a mill may be by reason of tenure or service, and also by custom, and therefore may well bind strangers. 2 *Bulst.* 195.

Tenants may be bound by custom to grind at the lord's mill.

And a new-erected house within the precincts is within the custom of multure; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hardr.* 177.

Millers are not to be common buyers of any corn to sell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. *Dalt. c.* 122.

By the 31 G. 2. c. 29, Magistrates may search mills for adulterated meal, &c. See title BREAD.

And by the 9 G. 3. c. 29, If any person or persons, unlawfully, riotously, and tumultuously assembled, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any wind saw-mill, or other wind-mill, or any water-mill, or other mill, or any of the works thereto belonging;

Demolishing, or beginning to demolish mills.

every such person shall be guilty of felony without benefit of clergy. And any person who shall wilfully or maliciously burn or set fire to any such mill, shall also be guilty of felony with benefit of clergy. Prosecution to be commenced within eighteen months after the offence committed.

Changing corn
indictable.

A miller may be indicted as a cheat for changing corn : as in the case of *K. and Wood, T. 16 G. 2.* The defendant, a miller, was indicted for changing *good* corn delivered to him to be ground, and giving *bad* corn instead of it. It was moved to quash it, as being only a private cheat. But it was answered, that, being a cheat in the way of trade, it concerned the public, and therefore was indictable. The court was unanimous not to quash it. *1 Sess. Cas. 217.*

Miller taking
corn with in-
tent to steal it.

It has been resolved, that a miller, who has corn delivered to him to be ground, may be guilty of felony, by taking away any part thereof with intent to steal it. *1 Haw. 90.*

Mines.

Mines, what.

MINES are places or caverns in the earth, which contain metals and minerals. Though a mine is not properly so called till it is opened ; it is but a vein before. Such however is the opinion of lord *Coke* in *1 Inst. 54.*

But the statutes to prevent the destruction of mines, are principally to be attended to in this work.

Setting fire to
any mine.

The *10 G. 2. c. 32,* enacts, That any person who shall wilfully and maliciously set on fire any mine, pit, or delph of coal, shall be guilty of felony without benefit of clergy.

Conveying
water to a mine.

And by the *13 G. 2. c. 21,* it is enacted, That if any person shall divert or convey any water into any coal-work, with intent to destroy or damage it, he shall pay to the party grieved treble damages, with costs.

Burning or de-
molishing any
engine for
draining water
from collieries.

And the *9 G. 3. c. 29,* enacts, That if any person shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage any fire-engine, or other engine erected for draining water from collieries or coal-mines, or for drawing coals out of the same ; or for draining water from any mine of lead, tin, copper, or other mineral ; or any bridge, waggon-way, or trunk, erected for conveying coals from any colliery or coal-mine, or staith for depositing the same ; or any bridge, or waggon-way erected for conveying lead, tin, copper, or other minerals from any such mine ; or shall cause or procure the same to be done, he shall be guilty of felony, and transported for seven years.

But

But the prosecution under this act must be commenced in eighteen months after the offence committed.

Minor. See INFANT.

Misadventure. See HOMICIDE.

Misdemeanor.

THIS word is principally applied to those crimes and offences, for which the law has not provided a particular name; and those offences are punishable, according to their magnitude or degree, by fine, or imprisonment, or both.

Misprision of Felony. See FELONY.

Misprision of Treason. See TREASON.

Money. See COIN.

Murder. See HOMICIDE.

Mute.

BY the common law, a person standing *mute* upon an arraignment for felony (that is, without speaking, or without putting himself on God and his country), was liable to a strange and cruel kind of punishment, called *pain fort et dure*; and the reason assigned was, because they refused to stand to the common law of the land.

But now, by *stat. 12 G. 3. c. 20*, If any person, being arraigned on any indictment or appeal for felony, or on any indictment for piracy, shall upon such arraignment stand mute, or will not answer directly to the felony or piracy, he shall be convicted of the offence, and the court shall thereupon award judgment and execution, in the same manner as if he had been convicted by verdict or confession; and such judgment shall have all the same consequences as a conviction by verdict or confession.

And the law is the same with respect to an arraignment for petit treason or larceny; for, before this act, persons standing mute in either of these cases, were to have the like judgment as if they had confessed the indictment. 2 *Inst.* 177. 2 *Haw.* 329.

Navigable Rivers. See BANKS, RIVERS, and NAVIGATION.

News-paper.

Stamp-duty on
news-papers.

THE 11 G. c. 8, enacts, That for every Journal, Mercury, or other public *news-paper*, shall be paid a stamp-duty of 1*d.* a sheet, and $\frac{1}{2}$ *d.* for every half sheet. By the 30 G. 2. c. 19, a further duty is imposed of $\frac{1}{2}$ *d.* more on every news-paper, whether on an half sheet, or less or more, and not exceeding one sheet: the 16 G. 3. c. 34, lays an additional stamp-duty of $\frac{1}{2}$ *d.* more on every news-paper; and the 29 G. 3. c. 50, a further additional half-penny.

Selling news-
papers unstamp-
ed.

And by the 16 G. 2. c. 26, If any person shall sell, or expose to sale, any news-paper, or any book, pamphlet, or paper, deemed to be a news-paper, unstamped, any justice may commit him (being convicted before him by confession, or oath of one witness) to the house of correction for any time not exceeding three months: and any person may apprehend and take him before such justice; and on producing a certificate of such conviction, under the hand of such justice, shall have a reward of 20*s.* to be paid by the receiver-general of the stamp-duties. *f.* 5.

Duty on adver-
tisements.

Also for every *advertisement* in the Gazette, or other printed paper, published weekly or oftener, shall be paid 1*s.* by the 10 Ann. c. 19.—1*s.* more by 30 G. 2. c. 19.—6*d.* more by the 20 G. 3. c. 28.—and 6*d.* more by the 29 G. 3. c. 50.

And for every advertisement contained in or published with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2*s.* by the 30 G. 2. c. 19.—6*d.* more by the 20 G. 3. c. 28.—and 6*d.* more by the 29 G. 3. c. 50.

And by the 29 G. 3. c. 50, it is enacted, That after *August* 1, 1789, nothing shall be allowed for the stamps of papers remaining unfold; but an abatement shall be made at the rate of 4*l.* in 100*l.* on paying at one time 10*l.* or upwards for stamps. And hawkers shall not lend news-papers to be read, on pain of 5*l.* *f.* 7, 8, 9.

And all the respective proprietors of news-papers, are required to join in the security required for payment of the duties on advertisements. *f.* 10.

Persons counterfeiting the stamp on news-papers, shall suffer death without benefit of clergy. *f.* 13.

But

But nothing herein shall extend to any single advertisement, printed by itself.

And by the 10 *Ann. c. 19. s. 101*, for every pamphlet contained in half a sheet of paper $\frac{1}{2}d.$ If larger than a half sheet, and not exceeding a sheet, $1d.$ for every printed copy. If more than one sheet, and not exceeding six sheets, in octavo, or a lesser page, and not exceeding twelve sheets in quarto, or twenty sheets in folio, for every sheet which shall be contained in one printed copy thereof, $2s.$

But nothing herein shall charge any act of parliament, proclamation, order of council, form of prayer, or other act of state, printed votes, school-books, books of devotion, daily accounts of imports and exports, or weekly bills of mortality. *s. 102.*

If any person shall write, print, or expose to sale any such pamphlet or news-paper, (the said pamphlet exceeding one sheet only excepted) before the paper shall be stamped, he shall forfeit $10l.$ with full costs. *s. 105.*

A printed copy of every pamphlet containing more than one sheet, shall (within the bills of mortality) in six days after printing, be brought to the head office, and the title, number of sheets, and duty shall be entered in a book, and the duty thereon paid to the receiver-general, who shall give a receipt on such printed copy, or the same shall be stamped to denote the payment. Without the bills, such pamphlet shall be brought in fourteen days to some head collector of the stamp-duties, who shall enter the title, number of sheets, and duty: and the duty shall thereupon be paid to the collector, who shall give a receipt for it on such printed copy. *Same stat. s. 111.*

Time limited for entering pamphlets.

And if any such pamphlet, consisting of more than one sheet, shall be printed or published, and the duty not paid, and title registered, and one copy stamped where required so to be, within the time limited; the author, printer, and publisher, and all other persons concerned, shall lose all property therein, and in every copy thereof; and also forfeit $20l.$ with full costs. *s. 112.*

If any person shall expose to sale any such pamphlet, without the name and place of abode of some known person, by or for whom it was printed or published, written or printed thereon, he shall forfeit $20l.$ *s. 113.*

Must have the publisher's name.

And pamphlets unfold shall be cancelled by the commissioners, and the like number of other sheets stamped gratis shall be changed for them. *s. 114.*

Two justices may hear and determine offences in relation to pamphlets or news-papers, and mitigate the penalty, so

as not to reduce it to lower than one fourth part, over and above the costs: and where goods of the offender cannot be found, may commit him to prison till paid. *f.* 120.

Noblemen. See PEERS.

Nonconformists. See DISSENTERS.

Northern Borders.

Punishment for
exacti^g black-
mail.

THE 43 *Eliz.* c. 13, recites, That forasmuch as many persons dwelling in *Cumberland*, *Northumberland*, *Westmorland*, and *Duresme*, have been taken by force and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil-takers in the said counties, to the end thereby to be by them freed, protected, and kept in safety; by reason whereof many are impoverished, and rapine much increased: it is therefore enacted, That whosoever shall, without good authority, take or detain any such persons against their wills, to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise, or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other consideration, commonly called *Blackmail*, for such protection; or shall burn any stack of corn; he shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy. *f.* 1, 2.

In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as *geese maile*, *cow maile*, and the like; and in *Scotland*, *maile* is still the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) were rents paid in silver, and thereby distinguished from work-day rents, cummin-rents, corn-rents, and the like. *Black maile*, or black rents, seem properly to have been rents paid in cattle, 3 *Burn.* 213.

And by the said statute, *f.* 3, 4, 5, 6, Persons outlawed in any of the said counties for murder, robberies, burglaries,

or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in *Carlisle, Penrith, Cockermouth, Appleby, Kendal, Newcastle, Morpeth, Alnwick, Hexham, Duresme, Darlington, Bishop Auckland, Barnard-castle, and Berwick*, and once a month in every their county courts, till they surrender, and the mayors shall proclaim them in every fair, and every six weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year

And by the 13 & 14 C. 2. c. 22, The justices of *Northumberland* and *Cumberland* may make order in sessions, for charging the respective counties, for securing them against the moss-troopers (that is, thieves and robbers, who after having committed offences in the borders, escape through the wastes and moors); so as *Northumberland* be not charged above 500*l.* nor *Cumberland* above 200*l.* a year. And they may appoint a commander, with thirty men in *Northumberland*, and twelve men in *Cumberland*, to search for, pursue, and apprehend offenders.

Apprehending moss-troopers on the borders.

And by the 29 & 30 C. 2. c. 2, The persons so employed shall be chosen in sessions yearly, or every two years at the farthest.

And by the same statute, the sessions shall take security of the persons by them employed for preservation of the borders, to answer the damages sustained by their neglect or default, and to pay the same in four months after proof made thereof in sessions by oath of one witness; provided the goods stolen be entered in one of the books kept for that purpose, in forty-eight hours after they are stolen or gone; and books shall be kept for that end in every market town in the said counties, and in such other places, and by such persons, as the sessions shall appoint.

Persons employed to give security.

And the 18 C. 2. c. 3, enacts, That great and notorious thieves, and spoil-takers, in the said counties of *Northumberland* and *Cumberland*, shall suffer death as felons without benefit of clergy; or be transported by order of the judges of assize, during life.

Notorious thieves or spoil-takers.

And the 13 G. 3. c. 31, enacts, That if any person against whom a warrant shall be issued by any justice in *England*, for any offence against the laws of *England*, shall escape into *Scotland*; the sheriff, or steward depute, or substitute, or any justice of the county or place where such person shall be, may indorse his name on the said warrant; which warrant shall then be a sufficient authority to the per-

Against offenders escaping out of one kingdom into the other, a warrant indorsed shall be effectual.

son bringing such warrant, and to all those persons to whom it was originally directed, and also to all sheriffs' officers, stewards' officers, constables, and other peace officers where such warrant shall be so indorsed, to execute it in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him into the county or place in *England* (being adjacent to *Scotland*) in which the offence was committed, before a justice of such county or place, to be there dealt with according to law: or, if the offence was committed in the county not next adjacent to *Scotland*, then to convey him into any county of *England* adjacent to *Scotland*, before a justice there, who shall indorse the warrant, as by the 24 G. 2. c. 55, as if the person had been apprehended in the said county.

f. 1.

And by the same statute, f. 2, If any person, against whom a warrant shall be issued by the lord justice-general, lord justice-clerk, or any of the lords commissioners of judiciary, or by any sheriff, or steward depute, or substitute, or justice of the peace of *Scotland*, for any offence against the laws of *Scotland*, shall escape into *England*, any justice of the county or place where he shall be, may indorse his name on such warrant: which warrant shall then be a sufficient authority to the person bringing it, and to all persons to whom it was originally directed, and also to all constables or other peace officers where such warrant shall be so indorsed, to execute it in the county or place where it is so indorsed, by apprehending the person against whom it is granted, and to convey him into the county or place in *Scotland* (being adjacent to *England*) where the offence was committed, before the sheriff or steward-depute, or substitute, or a justice of such county or place, to be there dealt with according to law: or, if the offence was committed in a county not next adjacent to *England*, then to convey him into any county of *Scotland* adjacent to *England*, before the sheriff, or steward-depute, or substitute, or a justice there; who shall proceed, with regard to such person, according to the rules and practice of the law of *Scotland*, as if he had been apprehended in the said county.

Expence of removing prisoners, how paid.

And the expence incurred by removing prisoners as aforesaid shall be repaid to the person defraying the same, by the treasurer of the county in *England*, or the sheriff, or steward-depute, or substitute of the county in *Scotland*, in which the offence was committed; the amount being previously ascertained upon oath before two justices of such county, and allowed and signed by them. f. 3.

If

If any person, having feloniously taken money, cattle, goods, or other effects, in either part of the united kingdom, shall afterwards have the same or any part thereof in his possession in the other part of the united kingdom, it shall be lawful to indict, try, and punish him for theft or larceny in that part where he shall have such money, or other effects in his possession, as if the same had been stolen there. *f. 4.*

Offender who takes his booty into the other part of the united kingdom, may be tried there.

And any person, in either part of the united kingdom, who shall knowingly receive or have any money, cattle, goods, or other effects, stolen or otherwise feloniously taken in the other part of the united kingdom, shall be liable to be indicted, tried, and punished for the same, in that part where he shall so receive or have the same, as if they had been originally stolen there. *f. 5.*

Or for receiving such money or effects.

Nuisance. or Nuisance.

NUISANCE (*nocumentum*, Fr. *nuire*, *nocere*) signifies not only a thing done, whereby another is annoyed, in his free lands or tenements, but the assize or writ lying for the same. *F. N. B. 183.*

A common nuisance (which is properly an object of attention in this work) is an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. *2 Rol. Abr. 83. 1 Haw. 197.*

A common nuisance.

I. What shall be deemed a Nuisance.

II. How removed or abated.

III. How punishable.

I. What shall be deemed a Nuisance.

Annoyances to the prejudice of particular individuals, are not punishable by a public prosecution as common nuisances, but are to be redressed by the private actions of the parties aggrieved. *1 Haw. 197.*

Annoyances affecting particular persons.

M. 10 W. Johnson v. Long. The plaintiff brought an action on the case against the defendant, and declared that the defendant, 21st of April, 9 W. 3. erected a wall which stopped the ancient lights of the plaintiff's house. The defendant

An individual may not only have his action for a particular nuisance, but also for the continuance of it.

defendant pleaded, that the plaintiff brought an action in *Easter* term last, for the erecting of this wall the 1st of *October* before, and recovered, and averred that this was the same erection, &c. The plaintiff demurred; whereon judgment was given for the defendant; for, though he might have another action for the *continuance*, yet he cannot have another action for the same erection. 1 *Raym.* 370.

Stopping ancient lights.

But erecting a shed so near a man's house, that it stops up his *lights*, is not a nuisance for which an action will lie, unless the house is an *ancient* house, and the lights ancient *lights*. 2. *Salk.* 459.

Proceedings on private and public nuisances.

If a man is annoyed by a private nuisance, he shall have his action upon the case, and recover his damages; but, if it is a public nuisance, he shall not have an action upon the case; the law having made this provision to prevent a multiplicity of suits; for if any one might have an action, all men might have the like: but the law for this *common* nuisance has provided an apt remedy, by *presentment* or *indictment* at the suit of the king, in behalf of all his subjects; unless any man has a *particular* damage; as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss; there for his special damage, which is not common to others, he shall have an action upon the case. 1 *Inst.* 56.

Indictment to be general.

Hence it clearly appears, that no indictment for a nuisance can be good, which lays it to the damage of private persons only: as where it accuses a man of surcharging such a common; or of inclosing such a piece of ground, wherein the inhabitants of such a town have right of common, to the nuisance of all the inhabitants of such a town: or of disturbing a water-course running to such a mill, to the damage of such a person and his tenants, without saying of all the liege subjects of the king. 1 *Haw.* 197.

Exception.

It has however been said, that an indictment of a *common scold* is good, though it conclude to the common nuisance of *divers*, instead of all the king's subjects; perhaps for this reason (says Mr. *Hawkins*) because a common scold cannot but be a common nuisance. And perhaps, says he, the authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment it did not appear, with sufficient certainty, whether the way wherein the nuisance was alledged, were a highway, or only a private way; and therefore it shall be intended, from the conclusion of the indictment, that it was a private way, 1 *Haw.* 198.

Brewhouse, glass-house,

It seems the better opinion, that a brewhouse, glass-house
tallow-

tallow-chandler's shop, or sty for swine, set up in such inconvenient parts of a town, that they cannot but greatly incommode the neighbourhood, are common nuisances. 2 tallow-chand-
lers, shop, hog-
sty.

Rol. Abr. 139. *Cro. Car.* 510. 1 *Vent.* 26. 1 *Keb.* 500.

3 *Mod.* 138.

E. 4 Ann. Q. v. Wigg. The defendant was indicted for keeping of hogs here in town in some of the back streets, against the form of the statute. And the court was moved to quash the indictment, because by *stat. 2 W. c. 8. sess. 2. s. 20*, there was a particular penalty appointed for this offence, *viz.* forfeiture of the swine to the use of the poor of the parish where they are kept, and therefore an indictment will not lie, at least not on the statute, as this was, by concluding, *against the form of the statute*. And the case of *The King v. Watson* was cited, where it was adjudged, that an indictment would not lie for keeping an alehouse without a licence, because there is a particular penalty appointed by act of parliament. *Holt*, chief-justice, and the court, agreed to the case of *The King v. Watson*, because the keeping an alehouse without licence, was no offence at common law; and they made this distinction, where a new penalty is appointed by act of parliament, for a matter that was an offence at common law, there you may either take that remedy which is given by the act of parliament, or proceed by way of indictment, as you might have done before; and therefore keeping of swine in the city, &c. being a nuisance at common law, the prosecutor is at liberty either to proceed by way of indictment for the nuisance, or to take the more expeditious remedy which is given him by the statute, *viz.* by sale of the swine: but where the statute makes the offence, there you must pursue that. As to the words, *against the form of the statute*, the offence being an offence at common law, that was surplusage, and would do no harm. If the defendant had any hopes in his exception, he should have demurred; for it is a rule never to quash an indictment for nuisances. *L. Raym.* 1163.

It seems to be the better opinion, that all common stages for rope-dancers, &c. are nuisances; not only because they are great temptations to idleness, but also because they are apt to draw together numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. 1 Stages for ropea
dancers, &c.

But it seems the better opinion, that playhouses, having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but Playhouses,
may

may only become such by accident; as where they draw together such numbers of coaches or people, &c. as prove generally inconvenient to the places adjacent; or when they pervert their original institution, by recommending vicious and loose characters under beautiful colours, to the imitation of the people, and make a jest of things commendable, serious, and useful. 1 *Rol. Rep* 109. 5 *Mod.* 142. *Skin.* 625. 1 *Haw.* 198.

Bawdyhouses.

There is no doubt but that common *bawdyhouses* are indictable as common nuisances. 1 *Haw.* 198.

Keeping great quantities of gunpowder.

T. 15 G. 2. K. v. Taylor. The court granted an information as for a nuisance, on affidavits of his keeping great quantities of gunpowder, to the endangering of the church and houses in the place where he lived. 2 *Str.* 1167.

Also in an anonymous case, *M. 11 W.* A person was indicted for a nuisance for keeping several barrels of gunpowder in a house in *Brentford* town, sometimes two days, sometimes a week, till he could conveniently send them to *London*. *Holt*, chief-justice, resolved, 1st, That to support this indictment there must be apparent danger, or mischief already done. 2dly, That though it had been done for fifty or sixty years, yet if it is a nuisance, time will not make it lawful. 3dly, If at the time of setting up this house in which the gunpowder is kept, there had been no houses near enough to be prejudiced by it, but some had been built since, it would be at the peril of the builder. 4thly, Though gunpowder is a necessary thing, and for the defence of the kingdom, yet if it is kept in such a place as to be dangerous to the inhabitants, or passengers, it will be a nuisance. 12 *Mod.* 342.

Making noisome, offensive, stinking liquors.

E. 30 K. v. White and Ward. Two persons were indicted for making great quantities of noisome, offensive, and stinking liquors, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis; whereby the air was impregnated with noisome and offensive smells: and it was held by the court to be a nuisance. The word *noisome* is substituted for the Latin *nocivus*, and means not only *disagreeable* but *hurtful*. And lord *Mansfield* said, It is not necessary to constitute the offence, that the smell should be unwholesome; it is enough if it renders the enjoyment of life and property uncomfortable. *Burr. Mansf.* 333.

Making great noises in the night.

T. 12 G. 2. K. v. Smith. The defendant was convicted on an indictment for making great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood: which the court held to be a nuisance, and fined the defendant 5*l.* *Str.* 704.

It is clearly agreed, that all gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and incite to idleness and avaricious methods of getting property, great numbers whose time might otherwise be employed for the general good of the community. And it has also been adjudged, that this is an offence for which a feme-covert may be indicted. 1 *Haw.* 198. T. 2 G. K. v. *Dixon and Wife.* Gaming-houses.

A gate erected in a highway, where none has been before, is a common nuisance. 1 *Haw.* 199. Erecting a gate.

A dog that kills sheep is not a public nuisance, but the owner, knowing thereof, is liable to an action; but not if he is ignorant of such quality: and in an action on the case for such killing, the plaintiff shall be required to prove, that the dog had used to kill sheep. *Dyer* 25. *Het.* 171. A dog.

So if a defendant kept a bull, accustomed to run at people, if he knew not of that quality. A bull.

A mastiff, going in the the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his majesty's subjects, seems to be a common nuisance; and consequently the owner may be indicted for suffering him to go at large. 3 *Burn*, 220. A mastiff.

Stopping a prospect is not a common nuisance. 3 *Salk.* 247. Stopping a prospect.

It was ruled by *Holt*, chief-justice, on an indictment for a nuisance, that the building of a house in a larger manner than it was before, whereby the street became darker, was not any public nuisance by reason of the darkening. *H.* 9 *W. K. v. Webb.* *L. Raym.* 737 Darkening a street.

If two men are owners of two parcels of land adjoining, and one of them builds a house upon his land, and makes windows and lights looking into the other's land, and this house and the lights have continued for the space of thirty or forty years; yet the other may, on his own land and soil, lawfully erect a house or other thing against the said lights and windows, and the other can have no action; for it was his folly to build his house so near the other's land. But if the former has continued for time immemorial, it is otherwise. *Cro. Eliz.* 118. Building a house near another's lands.

II. How removed or abated.

With respect to the manner of removing or abating a nuisance, it is observed by Mr. *Hawkins*, that any one may remove a common nuisance, pull Any person may remove a common nuisance.

pull down or otherwise destroy a common nuisance; as a new gate, or even a new house erected in a highway: for if a person whose estate is ~~or~~ may be prejudiced by a private nuisance, as a house hanging over his ground, or stopping his lights, &c. may justify the entering into another's ground, and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow, *à fortiori*, that any one may lawfully destroy a common nuisance: and, as the law is now holden, it seems that in a plea, justifying the removal of the nuisance, a man need not shew that he did as little damage as might be. 1 *Haw.* 199.

But, though he may remove the nuisance, he cannot remove the materials, or convert them to his own use. *Dalt.* c. 50.

No more than
the nuisance
should be re-
moved.

Regularly the judgment ought to be, to abate so much of the thing as makes it a nuisance. If a house be built too high, only so much of it as is too high should be pulled down. 9 *Co.* 53. *Godb.* 221. *Winch.* 3.

In the case of a glass-house, the judgment was to abate the nuisance; not that the house should be pulled down, but only to prevent his using it again as such. *Co. Ent.* 92. b.

The plaintiff cannot go on for damages, after the defendant has abated the nuisance. *Batten's case.* *Rol. Abr.* 84.

III. How punishable.

Punishment.

All common nuisances to the public are regularly punished by fine and imprisonment, at the discretion of the judges; but, in some cases, corporal punishment may be inflicted; as in the case of a common scold, who is said to be properly punishable by being put into the ducking or cucking-stool. Also the offence of keeping a bawdyhouse is punishable, not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. *Haw.* 200. *Salk.* 382.

And the defendant may be convicted, without setting forth the particulars in the indictment. 2 *Haw.* 227.

The offence, however, must be set forth with sufficient certainty, as will appear by the following case:

H. 19 G. 2. *K. v. Margaret Cooper.* The defendant was convicted on an indictment for being a common and turbulent brawler, and sower of discord amongst her quiet and honest neighbours, so that she had stirred, moved, and incited, divers strifes, controversies, quarrels, and disputes, amongst

amongst his majesty's liege people, against the peace, &c. It was moved in arrest of judgment, that the charge was too general, and did not amount to either a barrator or common scold, which are the only instances in which a general charge will be sufficient. It was also objected, that if the words did amount to a description of a scold, yet it should be laid to be to *the common nuisance* of her neighbours; for every degree of scolding is *indictable*. The court was of opinion that the judgment ought to be arrested on both exceptions, for none of the words here used are the technical words, and it must be laid to be to the common nuisance, &c. *Str.* 1246.

A person convicted of a nuisance done to the king's highway, may be commanded by the judgment to remove the nuisance at his own cost; and it is but reasonable, that those who are convicted of any other common nuisance, should have the like judgment. *1 Haw.* 200. *Str.* 886.

Nuisance to be removed by the person convicted.

All common nuisances are indictable, not only at the sessions, but also in the torn or leet. *2 Haw.* 67.

And the defendant shall not be allowed to make any objections against the indictment, till he has pleaded to it. *Dalt. c.* 66.

A master is indictable for a nuisance done by his servant. *L. Raym.* 264.

Many offences are declared to be common nuisances by particular statutes, which are noticed under their respective titles.

General indictment for a nuisance.

Surry.] *The jurors for our lord the king upon their oath present, that A. B. late of* *in the county of*
yeoman, on the *day of* *in the* *year of*
the reign of *and on divers other days and times, as*
well-before as afterwards, with force and arms, at
in the said county, [here set forth the nuisance;] and the
same (nuisance) so as aforesaid done, doth yet continue and
suffer to remain; to the common nuisance of all the lieges and
subjects of our said lord the king, to the evil example of all
others in the like case offending, and against the peace of our
said lord the king, his crown and dignity.

Oaths.

Oath, what.

OATH, a corruption of the *Saxon* word *eoth*, is a calling Almighty God to witness that a testimony is true ; therefore it is aptly termed *sacramentum*, a holy band, a sacred tie, or godly vow. And it is called a *corporal oath*, because the party, when he swears, touches with his right hand the holy Evangelists, or book of the New Testament. 3 *Inst.* 74. And anciently at the end of a legal oath was added, *So help me God at his holy dome, i. e. judgment.* Black Book of Herefy, fol. 46.

I. Of Oaths in general.

II. Affirmation of Quakers.

III. Oaths of Infidels.

I. Of Oaths in general.

On the Common Prayer Book.

Though regularly the oath should be taken on the New Testament, yet if it be taken on the Common Prayer Book, which has the epistles and gospels, it is good ; and perjury on the statute may be assigned upon this oath. 2 *Keb.* 314.

Of administering oaths.

The 15 *G.* 3. c. 39, recites, That whereas it is frequently necessary for justices of the peace to administer oaths, where penalties are to be levied, or distresses to be made, in pursuance of acts of parliament, which they have no power to administer, unless authorised so to do by such acts respectively ; it is therefore enacted, that in all cases where any penalty is directed to be levied, or distress to be made, it shall be lawful for any justice or justices, acting under the authority of such acts respectively, to administer an oath or oaths for the purpose of levying such penalties, or making such distresses.

And it seems generally understood, that the statutes which give power to the justices to hear and determine, also give them every thing necessary for the execution of that power ; and consequently enables them to administer oaths in all cases where they have cognizance by act of parliament. This power is constantly exercised, and seems not to be questioned.

Breach of oath not always perjury.

Where an oath is administered by a person lawfully authorised to tender it, and it shall afterwards be broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law. 3 *Inst.* 166.

Therefore

Therefore if a person be called a *perjured man*, he may have an action on the case against him who called him so ; because it shall be intended to be contrary to his oath in a judicial proceeding : but for calling another a *forsworn man*, no action lies ; because the swearing may be extra-judicial, and consequently no perjury in law. 3 *Inst.* 166.

A person who has no notion of eternity cannot be examined on oath ; as in the following case : On the trial of one *White* for horse-stealing, at the Old Bailey, in *October* session 1786, *Thomas Atkins* was called as a witness to support the prosecution. Being examined on the *voir dire*, he said, that he had heard there was a God, and believed that those persons who told lies would come to the gallows ; but acknowledged that he had never learned the catechism, and was altogether ignorant of the obligations of an oath, a future state of rewards and punishments, the existence of another world, or what became of wicked people after death. The court rejected him, as being incompetent to be sworn. *Leach's Cas. in Cr. Law*, 368.

A person having no notion of eternity is incompetent to be sworn.

And in the case of *Omychund v. Barker*, *M.* 1744, it was said by *Willes*, chief-justice, and agreed by the court, That persons who do not believe in God, or that there is a future state of rewards and punishments, clearly ought not to be admitted as witnesses. 1 *Atk.* 45.

Further particulars on this head are given under the titles PERJURY, EVIDENCE, and JURORS.

Every layman, above the age of twelve years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the Reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

For the *Oath of Allegiance*, see title DISSENTERS.

The oath of supremacy came in, upon abolishing the papal authority at the reformation.

Oath of supremacy.

For the *Oath of Supremacy*, see DISSENTERS.

For the *Oath of Abjuration*, see ABJURATION.

For the *Declaration against Popery*, see DISSENTERS.

The declaration against transubstantiation, by the 25 C. 2. c. 2. f. 9, is as follows :

“ I *A. B.* do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.”

Declaration against transubstantiation

VOL. III. (29.)

O

II. Affirmation

II. Affirmation of Quakers.

Affirmation allowed.

When any act of parliament allows or requires an oath, the solemn affirmation of Quakers shall be allowed instead of such oath, even though no express provision be made for that purpose in such act. 22 G. 2. c. 46. And therefore such provisions, which are very frequent in acts of parliament, are superfluous.

Perjury incurred by false affirmation.

And if any person shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which, if sworn in the usual form, would have amounted to wilful and corrupt perjury, he shall suffer as in cases of perjury. 8 G. c. 6. s. 2.

Affirmation not allowed in criminal matters.

But by the 7 & 8 W. c. 34, No Quaker shall by virtue hereof be qualified or permitted to give evidence in any criminal cause, or serve on any juries, or bear any office or place of profit in the government. s. 6.

What are criminal matters.

By the words, *any criminal cause*, it seems that a Quaker shall not have sureties of the peace or good behaviour granted to him, or have a warrant to search for stolen goods, or sue the hundred for damages in case of robbery, and the like, upon his bare affirmation; but that, in all such cases, an oath is first necessary to be made.

Quaker's affirmation not to be read in support of a criminal charge.

H. 8 G. 3. *K. and Gardner*. The affirmation of a Quaker was offered, in exculpation of Mr. *Gardner* the defendant, upon shewing cause why an information should not be exhibited against Mr. *Gardner* for a misdemeanor. The reading of this affirmation was objected to. And the court held clearly, 1. That a Quaker's affirmation could not be read in support of a criminal charge. But, 2. They thought an affirmation might be read in defence of a criminal charge, if the person charged was himself a Quaker, in order to exculpate himself. 3. In this case of a collateral evidence, in assistance of the exculpation of another person, when the Quaker himself was not charged at all, they thought his affirmation ought not to be read. And accordingly it was withdrawn. *Burr. Mansf.* 1117.

In the case of *Robins and Seward*, T. 7 G. The court refused to ground an attachment for non-performance of an award, on the affirmation of a Quaker; for though it be a suit between party and party, it is a criminal prosecution within the proviso of the statute. *Str.* 441.

Quakers affirmation not admitted in cases of bribery.

And in the case of *Atcheson and Everitt*, H. 16 G. 3. On an action of debt on the statute against bribery, a Quaker's affirmation was objected to because bribery is a criminal offence, subjecting the offender not only to the penalty

nalty inflicted by the statute, but also punishable as an offence at common law. But by the court: In all cases where an action and an indictment both lie for the same act, as in assault, imprisonment, and the like, a Quaker is admissible as a witness in the action, though not on the indictment. *Cowper*, 382.

By the 12 G. 2. c. 13. s. 8, Quakers may be admitted attornies on taking their affirmation. May be admitted attornies.

The Quaker's solemn affirmation, instead of an oath, as finally settled by the 8 G. c. 6, is as follows; viz. General form of affirmation.

"I *A. B.* do solemnly, sincerely, and truly declare and affirm."

Instead of the oaths of allegiance and supremacy, Quakers shall be permitted to make the following declaration of fidelity, by the 8 G. c. 6. Declaration of fidelity.

"I *A. B.* do solemnly and sincerely promise and declare, that I will be true and faithful to king *George*; and do solemnly, sincerely, and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position; that princes excommunicated or deprived by the pope, or any authority of the see of *Rome*, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm."

Also by the same statute of the 8 G. c. 6, Quakers were allowed to take the effect of the abjuration oath according to the form therein prescribed. After the death of the person pretending to be king of *England*, by the name of *James* the Third, it became necessary to alter the form of the abjuration oath. Therefore by the 6 G. 3. c. 53, a new form of abjuration oath is prescribed. But neither by that act, nor any other, is any provision made for altering the Quakers' affirmation or declaration conformable thereunto. It seems, however, that the form thereof ought to be thus: Abjuration.

"I *A. B.* do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king *George* is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe, that not any of the descendants of the person who pretended to be prince of *Wales* during the life of the late king *James* the Second, and since his decease pretended to be, and took upon himself the style and title of king of *England*, by the name of

“James the Third, or of Scotland, by the name of James the Eighth, or the style and title of king of Great-Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to any of them. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful, against all treacherous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traitorous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against the descendants of the said James, and against all other persons whatsoever, as the same is and stands settled by an act, intituled, *An act declaring the rights and liberties of the subject, and settling the succession of the crown*, to the late queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands settled and entailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.”

Profession of
belief.

The following is a Quaker's profession of belief, by the
I W. c. 18.

“I A. B. profess faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore: and do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration.”

III. Oaths of Infidels, and others.

Jews swear by
the Old Testa-
ment,

Jews are to be sworn on the Old Testament, and perjury
upon

upon the statute may be assigned upon such oath. 2 *Keb.*

314.

H. 2 G. 2. Gomez Serra and Munex. Upon error in with their hats
debt upon a bond, the bail, being both Jews, were suffered on,
to put on their hats while they took the oath. *Str.* 821.

When Jews take the oath of abjuration, [*on the true faith of a Christian*] are omitted. 10 *G. c. 4. s. 18.*

At the Old Bailey, in *February* session 1786, *David A Scotch cove-*
Mildrone was produced as a witness on the trial of *Chris-* nanter may
tiana Fitzpatrick for larceny. He stated to the court that give evidence
he was a North-Briton, and that the way of swearing in without touch-
Scotland was not to kiss the book. Mr. justice *Gould* said, ing the book.
That on the trial of the rebels at *Carlisle*, in 1745, finding
it to be the ceremony of a particular sect, he admitted a
witness to swear by the form of holding up his hand, with-
out touching the book or kissing it; and that he afterwards
referred the case to the opinion of the twelve judges, who
determined that the witness was legally admitted. Upon the
authority of this case, *David Mildrone* was sworn by *Tho-*
mas Shelton, Esq. clerk of the arraigns, in the following
form: "You swear according to the custom of your coun-
try, and the religion you profess, that the evidence you
shall give, between our sovereign lord the king and the
prisoner at the bar, shall be the truth, the whole truth,
and nothing but the truth, so help you God." The pri-
soner was convicted. *Leach's Cas. in Cr. Law*, 348.

At the council, *Dec. 9, 1738.* Present the two chief- A Moor per-
justices. On a complaint of *Jacob Fachina* against general mitted to swear
Sabine, as governor of *Gibraltar*, *Alderaman Ben Monso*, a on the Koran.
Moor, was produced as a witness, and sworn upon the
Koran. *Str.* 1104.

And in the case of *Omichund* against *Barker*, *H. 18 G. 2.* Heathens per-
In the court of Chancery, the depositions of several persons mitted to swear.
who were heathens, of the *Gentoo* religion, sworn after their
own country manner, were admitted to be read. 2 *Eq.*
Cas. Abr. 1 *Atk.* 21.

Office.

- I. Qualifications for Offices in general.
- II. Qualifications for Offices in Corporations.
- III. Duty on the Perquisites of Office.

Q 3

I. Qualifications

I. *Qualifications for Offices in general.*

The king is the universal officer.

THE king is the universal officer and disposer of justice within this realm, from whom all others are said to be derived; but he cannot create a new office inconsistent with our constitution, or prejudicial to the subject. 12 Co. 11. 1 *Rel. Rep.* 206. *Carth.* 478.

But he cannot create a new office inconsistent with the constitution.

A person of the name of *Chute* petitioned the king to erect a new office for registering all strangers within the realm, except merchant-strangers, and to grant the said office to the petitioner with or without a fee; and it was resolved by all the judges at Serjeant's Inn, that the erection of such new offices, for the benefit of a private person, was against all law of what nature soever. 1 Co. 116.

Officers, civil and military, to receive the sacrament, and subscribe the declaration against transubstantiation.

The 25 C. 2. c. 2, enacts, That every person who shall be admitted into any office, *civil* or *military*, or shall receive any pay by reason of any patent or grant from the king, or shall have any command or place of trust in *England*, or in the navy, or shall have any service or employment in the king's household, shall, within three months after his admission, receive the sacrament of the Lord's supper, according to the usage of the church of *England*, in some public church on the Lord's Day, immediately after divine service and sermon: and in the court where he takes the oaths (as hereafter mentioned, which shall be within six months after his admission), he shall first deliver a certificate of such his receiving the sacrament, under the hands of the minister and churchwardens, and shall then make proof of the truth thereof by two witnesses on oath. And, when they take the said oaths, they shall also make and subscribe the declaration against transubstantiation. All which shall be inquired of, and put upon record in the respective courts. s. 2, 3, 9.

A clergyman is not obliged to prove his having received the sacrament, &c. unless he has also a civil office.

By the words, *any office civil or military*, ecclesiastical offices certainly cannot be intended. For if a clergyman be instituted to a benefice, though he must take the oaths which are taken by others qualifying for offices, yet he is not required to make proof of his having received the sacrament. But if he is admitted into a civil office, such, for instance, as the office of a justice of the peace, it is then required that he should prove that he has received the sacrament.

Officers excepted.

Also by the same statute, s. 17, the same shall not extend to the office of any high constable, petty constable, tithingman, headborough, overseer of the poor, churchwarden, surveyor

surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices.

And with respect to the oaths, every person who shall be admitted into any office, civil, or military, or shall receive any pay, by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils; schoolmasters and ushers; preachers and teachers of separate congregations; high constables, and practisers of the law, shall, within six calendar months after such admission, take and subscribe the oaths of allegiance, supremacy, and abjuration, in one of the courts at *Westminster*, or at the general or quarter-sessions of the place where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceedings in the said court shall cease. 1 *G. ft. 2. c. 13. f. 2.* 2 *G. 2. c. 31. f. 3, 4.* 3 *G. 2. c. 26. f. 3.* 25 *C. 2. c. 2. f. 2.*

Taking the oaths of allegiance, supremacy, and abjuration.

But not to extend to the office of tithingman, head-borough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private officers. 1 *G. ft. 2. c. 13. f. 20.*

Officers excepted.

And this exception is the same as that in the 25 *C. 2.* with this difference only, that high constables and petty constables by name are here omitted. Petty constables nevertheless seem to be excepted, as holding a *like inferior civil office* with the tithingman, or headborough: but high constables are expressly inserted amongst the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the sacrament, and from subscribing the declaration against transubstantiation.

And by the 25 *C. 2. c. 2.* The court shall inroll such persons' names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some public place of such court during the whole time of its sitting, to be seen without fee. *f. 6.*

Inrolling and fee.

And the clerk of the peace shall have 2s. and no more for the entry. 1 G. 2. c. 13. f. 9.

But no seaman or soldier, under the degree of a commission or warrant-officer, shall pay any fee for taking the oaths. *Id.* f. 31.

Penalty of executing the office unqualified.

Every person who shall make default herein, shall be incapable of holding his office; and if any person shall execute his office, after the said times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and shall also forfeit 500l. to him who shall sue for the same. 25 C. 2. c. 2. f. 4, 5. 1 G. 2. c. 13. f. 8.

Feme-covert :
Infant : Non
compos.

No married woman, or person under eighteen years of age, or *non compos mentis*, shall forfeit their office (other than such married woman during the life of her husband only) if they take the oaths, and do the other things required, within four months respectively, after the death of the husband, coming to the age of eighteen years, and becoming of sound mind. 25 C. 2. c. 2. f. 13.

Persons beyond
the seas excepted.

And by the 9 G. 2. c. 26. f. 4, Persons beyond the seas shall not be disabled, provided they qualify within six months after their return.

General indemnification.

And by some act or clause in almost every session of parliament, persons who have omitted to qualify themselves in due time, are indemnified, on their qualifying within a time therein limited, if judgment has not been given against them for the penalty incurred by their neglect, and provided their place is not filled up.

Persons disqualified may take a new grant.

And any person who shall have forfeited his office may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 G. 2. c. 13. f. 14.

Persons disqualified in the Universities.

In the Universities, where a person shall not take the oaths, or shall not produce a certificate thereof, to be registered in the proper college, and another be not elected in his place within twelve months, the king shall appoint and nominate. *Id.* f. 12, 13.

Offices of inheritance may be executed by deputy.

Persons refusing the oaths, who have any office of inheritance, may appoint a deputy, provided such deputy be approved by the king, under his privy signet. *Id.* f. 18.

The forms of such oaths are inserted in the titles ABJURATION, and DISSENTERS.

The form of the declaration, under the title OATHS.

II. Quali-

II. Qualification for Offices in Corporations.

By the 13 C. 2. *ft.* 2. *c.* 1, and the 5 G. c. 6. *f.* 1, 2, Mayors, aldermen, recorders, bailiffs, &c. to receive the sacrament, and take the oaths of allegiance and supremacy.
 No person shall be placed, elected, or chosen to any office or place of mayor, alderman, recorder, bailiff, town-clerk, common-councilman, or other office of magistracy, place, trust, or other employment relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who shall not have received the sacrament of the Lord's supper, according to the rites of the church of *England*, within one year next before such election. And every such person so elected shall also take the oaths of allegiance and supremacy, at the same time that the oath of office is taken; and it shall be administered by those, who by charter or usage administer the oath of office, and in default of such, by two justices of the corporation, if there are such; if not, by two justices of the county. And in default thereof, such election and placing shall be void.

It has been adjudged to be no sufficient excuse for not taking the oaths, that they were not tendered. 1 *Haw.*

But though the words of this act, and also of that of 25 C. 2. *c.* 2, make the officer's election *void*, yet it has been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing it without any objection to his authority, may be valid as to strangers; for otherwise not only those who do not in any degree infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for each other's fault to which they are no way privy: and one chasm in a corporation, happening through the fault of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his. 1 *Haw.* 10.

And after a long acquiescence, the court will not disqualify, as in the case of *K. v. Williams*, mayor of *Helstone*, *H.* 12 G. The defendant was elected a corporator eight years before, and an entry was made in the corporation books of his taking the oath of office, and the oaths of allegiance and supremacy; the court was now moved for an information in the nature of a *quo warranto*, on the affidavit of the town-clerk, who swore that he did not administer the oath of allegiance, though he made the entry in the manner it appeared to be. But the court would do nothing in it, after so long an acquiescence; and said it would be of dangerous

dangerous consequence, to allow a *town-clerk* to disqualify members by his own oath, contrary to the record, *Str.* 677.

Memorandums
of oaths to be
made and enter-
ed.

By the 13 *C. 2. fl. 2. c. 1*, The said justices above mentioned shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town-clerk, or other register or clerk, who shall enter the same in their books.

Limitations of
actions.

But by the 5 *G. c. 6*, No such office shall be void by reason of not having received the sacrament, unless the person shall be removed in six months, or prosecution shall be commenced in six months, and carried on without wilful delay. *f. 3.*

General indem-
nification.

It may here be necessary to observe, once more, that there is usually a clause of general indemnification, in some act, in almost every session of parliament, on condition that persons qualify on or before the time limited in such clause.

If there shall be no removal or prosecution within six months, the election stands confirmed, and becomes absolute. As in the case of *Crawford v. Powell*, *T. 33. & 34. G. 2. Burr. Mansf. 1013.*

III. Duty on the Perquisites of Office.

Perquisites,
what.

By *perquisites* are meant such profits of offices and employments, as arise from fees established by custom or authority, and payable either by the crown or the subjects, in consideration of business done in the course of executing such offices and employment. 32 *G. 2. c. 33. f. 8.*

Duty on perqui-
sites of office.

There are certain duties laid upon offices and pensions; and so much of the salaries of such offices as arises from perquisites, is directed to be under the management of the commissioners of the land-tax. 31 *G. 2. c. 22. 32 G. 2. c. 33.*

Duty on offices
and pensions.

And by the 31 *G. 2. c. 22*, There shall be paid yearly, over and above all other duties, 1s. for every 20s. of the annual value of all salaries, fees and perquisites, incident to, or received for or in respect of all offices and employments of profit in *Great-Britain*; and the like sum of 1s. for every 20s. of all *pensions* and other gratuities payable out of any revenue belonging to his majesty in *Great-Britain*, exceeding the value of 100l. a year. *f. 1.*

And by the same statute, *f. 2*, A deduction shall be made thereof in the Exchequer; or if paid by any person, and not

out

out of the Exchequer, then the same shall be paid by such person into the Exchequer.

But if the whole or part of the profits of such offices shall arise from perquisites due and payable in the course of office, and not from salaries, fees, and wages paid by the crown; the same shall be under the management of the commissioners of the land-tax, who shall ascertain, according to the valuation of such offices to the land-tax, or otherwise according to their best judgment, the sum total of the perquisites arising from such office, distinct from the salary, fees, and wages thereof. 31 G. 2. c. 22. / 3, 5, 6. 32 G. 2. c. 33. / 5.

For which purpose the said commissioners shall meet at the most common places of meeting, yearly, on or before

What relates to perquisites to be under the management of the commissioners of the land-tax.
Manner of assessing.

July 3, and afterwards as often as shall be necessary, and may subdivide; and any two or more of them, at such general meeting, or within eight days after, shall set down in writing, in a rate to be by them prepared for that purpose, the amount of such duty of 1s. in the pound, to be paid by all officers, their clerks, or agents, exercising any of the said employments, whereof the salary, wages, fees, and perquisites exceed the annual value of 100/. 31 G. 2. c. 22. / 6.

And the receiver to be appointed by his majesty for these duties, shall transmit to the commissioners of the land-tax, in every district where any office is to be assessed, an account of all such offices whereof the salaries, fees, and wages, do not exceed 100/. a year: and if it shall appear to the commissioners that the perquisites arising from such office, together with the salary, fees, and wages thereof, as certified by the receiver, shall exceed together the amount of 100/. a year, they shall assess such office, and cause the duty of 1s. in the pound to be levied and collected thereon. 32 G. 2. c. 33. / 6.

The receiver to transmit an account of salaries, fees, and wages to the commissioners of the land-tax.

If any person shall have two or more offices in any part of Great-Britain, the salary and perquisites of which together exceed 100/. a year; such person shall pay 1s. in the pound for the profits of such offices, though the salary and perquisites of no one of them is of the value of 100/. a year. 31 G. 2. c. 22. / 23.

Where the salary of two or more offices amount to 100l. a year.

And the deputies shall pay for their principles, and deduct the sum they shall pay out of the profits of their office. / 27.

Deputies to pay.

But nothing herein shall extend to such pensions or gratuities as the king shall declare in the warrant directing the payment thereof, to be intended as charitable donations. 32 G. 2. c. 33. / 10.

Exemptions.

Nor

Nor to any pension, annuity, rent, or sum, charged on the revenue by any of the king's predecessors, or by act of parliament, granted to any person in fee or fee-tail, or till redeemed by payment of any sum mentioned in any grant or act of parliament. *Id.* *f.* 12.

Nor to charge any offices or employments in either of the two universities. *f.* 13.

Nor by the 31 G. 2. c. 22, To the pay of commission or non-commission officers, or private men serving in the navy or army. *f.* 24.

Nor by the 32 G. 2. c. 33. *f.* 11, To the pay of any military officers, serving on the staff, or belonging to any of his majesty's garrisons, regiments, troops, companies, Chelsea Hospital, or the hospitals of the army.

Signing assessment, and appointing collectors.

And by the 31 G. 2. c. 22. *f.* 6, The said commissioners, or three of them, shall, within the time above limited, sign and seal two duplicates of the said rates, and cause one of them to be delivered to the collector of the land-tax for each place respectively, or to such other two honest and responsible persons as they shall appoint to be collectors thereof.

Transmitting duplicates.

And the commissioners shall cause to be delivered a duplicate in parchment, under their hands and seals, containing the whole sum rated in each parish or place, to the said receiver, and another into the remembrancer's office in the Exchequer, on or before the first day of *Hilary* term, or within twenty days after (all appeals being first determined). *Id.*

Appeal.

Also by the same statute, *f.* 6, Persons who think themselves aggrieved by being *over-rated*, may appeal to the barons of the Exchequer, and they or one of them shall hear and determine all such appeals, on or before the last day of *Michaelmas* term yearly. Persons charged shall be permitted to inspect the rates, in the day-time, without fee. But notice of appeal must be given in writing to a collector.

Disputes how adjusted.

And should any dispute arise, whether the fees, salary, or wages of any office or employment, or whether any pension or gratuity be chargeable, or respecting the sum which ought to be deducted thereout; the same shall be heard by the barons of the Exchequer, on complaint or representation laid in writing before them, either by the party grieved, or the receiver. And the complainant shall deliver a copy of his complaint to the person against whom it is made, within ten days after it shall have been lodged with the barons; and they shall hear and determine such dispute in a summary way, and their determination shall be final. 33 G. 2. c. 33. *f.* 3, 4.

By

By the 31 G. 2. c. 22. *f.* 7, The said duty shall be collected (where not otherwise herein directed) in all respects as the land-tax for 1758. Collecting.

Where any fees, salaries, wages, or other allowances or profits on any office, shall be payable at the receipt of the duty. Stopping the
Exchequer, or by the cofferer of his majesty's household, or out of any other public office, or by any of his majesty's receivers or paymasters; the duty, in case of non-payment, may be stopped there. *f.* 26.

And the sums so collected shall be paid to the receiver, in the course of the quarter wherein the same shall have been deducted; and the receiver shall give receipts for the same. Paying to the receiver.

31 G. 2. c. 22. *f.* 12. 32 G. 2. c. 33. *f.* 1.

And by the 32 G. 2. c. 33. *f.* 1, The receiver shall pay the same into the Exchequer within the next quarter. Paying into the Exchequer.

Form of the certificate of having received the Sacrament.

We the minister and churchwardens of the parish of
in the county of *do hereby certify, that on Sunday the*
day of *in the year of our Lord* *in the pa-*
rish church of *aforsaid, immediately after divine ser-*
vice and sermon, A. B. of *in the county of* *gent-*
leman, did receive the sacrament of the Lord's supper, ac-
cording to the usage of the church of England. Witness our
hands the day and year above written.

A. B. Minister.

C. D. } Church-

E. F. } wardens.

Overseers of the Poor. See POOR.

Outlawry. See PROCESS.

Pamphlets. See NEWS-PAPERS.

Paper.

BY the 24 G. 3. c. 41. *sess.* 2, Every paper-stainer, or maker of paper, shall take out a licence from the office of excise, for which he shall pay 2*l.* and shall renew such licence annually, ten days at least before the end of the year, on pain of forfeiting 20*l.* *f.* 1, 7.

And

Duty on paper
made in Great-
Britain.

And by the 27 G. 3. c. 13, Certain duties are laid on all paper made in *Great-Britain*, consisting of eighty different kinds and denominations. And such duties are chargeable according to the several qualities and dimensions of the paper, after the rate of so much a ream, or bundle, or according to their weight *ad valorem*.

What is a ream.

The *ream* to consist of twenty quires, and each *quire* to contain twenty-four sheets; except that the quire of double demy for news-papers shall consist of twenty-five sheets.

21 G. 3. c. 24. s. 5.

What is a bundle.

And a *bundle* shall consist of forty quires, each quire containing twenty-four sheets, except as before for news-papers. s. 5, 6.

Duties how to
be estimated.

And by the 27 G. 3. c. 31, In lieu of the duty imposed by the 27 G. 3. c. 13, after the rate of 20*l.* 14*s.* for every hundred pounds of the value of every sort not described in the five tables marked (F), annexed to the said act, it is enacted, that every sort of paper made in *Great-Britain*, not described in the said tables, and not being above the largest size of the paper nearest of the same sort enumerated in the said tables, the duty by the said act imposed shall be the nearest above in size and value to such kind of paper: and if above the largest size described in the said tables, the duty shall be charged in proportion to such size, to be estimated according to the paper nearest of the same kind and weight, and of the size nearest below such kind. s. 29.

Paper paying *ad*
valorem how to
be settled.

And by the 24 G. 3. c. 18. s. 2. s. 2, Paper paying *ad valorem* is to be computed as it shall be worth to be sold at *London*, without respect to the duties to be charged thereon, on the oath of the maker, according to the best of his knowledge and belief, to be taken before the collector or supervisor. And the collector shall receive the duties so sworn to *ad valorem*. And, to prevent frauds, the excise officers may examine any parcel, and if it shall be found to be undervalued, may detain and convey it to the next office of excise; and the collector shall, out of any money in his hands, pay the maker on demand the value of such paper so sworn to, with an addition of 10*l.* per cent over and above such value, taking a receipt for the same; and the commissioners may, whether such demand be made or receipt given or not, cause such paper to be sold, and dispose of the produce; half to the officers, and half into the Exchequer. s. 8, 9.

And whereas doubts having arisen whether such values should be taken to be so much as such paper is worth, inclusive of the duty, or exclusive thereof; for removing such doubts it is enacted, that the same shall be taken to be so much

much as such paper shall be worth to be sold, so soon as the same is perfectly made, inclusive of the duty charged thereupon. 24 G. 3. c. 18. *sess.* 2. *f.* 2.

And should any of the present denominations of paper hereafter be altered, the same duties shall still be paid. And should any new fabric or kind of paper be made, the maker shall pay the duties charged upon paper which shall be nearest above in size and goodness; which if he shall refuse or neglect to do, it shall be charged after the rate of 18% *per cent.* to be estimated on the oath of the maker as aforesaid. 21 G. 3. c. 24. *f.* 5, 7.

Altering the denominations or fabric of paper

But such books as shall be printed at the universities of Oxford and Cambridge, in the Latin, Greek, Oriental, or Northern languages, shall have a drawback of the duty. *f.* 40.

Books printed at Oxford and Cambridge exempted.

Pasteboard, having paid the duties, shall not be charged with any further duties, on the pasting together the sheets of such paper, and its receiving thereby the denomination of pasteboard or pasted paper. *f.* 42.

Pasteboard,

The commissioners of the treasury shall appoint commissioners of these duties, who shall substitute inferior officers. 10 Ann. c. 19. *f.* 41.

Officers of the duties on paper,

And the maker shall give notice in writing at the next office, of his name and place of abode, and of every workhouse and other place by him used for making, drying, or keeping such paper, or of the materials proper to be made into paper, and of all the mills, vats, presses, utensils, and vessels used in making it; on pain that if he makes any before he shall have given such notice, he shall forfeit 50*l.* 21 G. 3. c. 24. *f.* 10.

Places of making to be entered.

And he shall keep scales and weights, and assist the officer in using them, on pain of 20*l.*; and any maker who shall procure or use any false scales or weights, shall forfeit 100*l.* 21 G. 3. c. 24. *f.* 14.

The officer shall, by day or night, if in the night in presence of a constable, be permitted on request to enter the house, mill, yard, warehouse, or other place, and take an account, and make report thereof to the commissioners, or to whom they shall appoint, and leave a copy (if demanded) of such report, under his hand, with the maker; and if he shall neglect to leave such copy (after demand in writing) he shall forfeit 40*s.* 10 Ann. c. 19. *f.* 48. 21 G. 3. c. 24. *f.* 13.

Officer to enter and take account.

And by the same statute, *f.* 15, he shall be permitted to take an account of the quantities of rags, cordage, and other materials.

And of the materials.

And

Removing the paper before an account is taken.

Penalty on obstructing the officer.
Concealing paper.

Paper unsurveyed to be kept separate.

Entry of paper made on oath.

Duty charged, after giving proper notice.

Reams and bundles to be stamped.

Payment of the duty.

Drawback for paper damaged.

And no maker shall remove any paper of which no account has been taken, on pain of 50*l.* and forfeiture of it, with the horses, boats, or vessels removing the same. Provided that, with a proper certificate from the officer of excise, paper may be removed from the mill where made, to any other mill, there to be sized or finished fit for use. 21 G. 3. c. 24. *f.* 16, 17. 24 G. 3. c. 18. *sess.* 2. *f.* 5.

By the 21 G. 3. c. 24, Should any person obstruct an officer in the execution of his duty, he shall forfeit 20*l.* *f.* 36.

Or if the maker shall conceal any paper or materials, he shall forfeit 50*l.* and the paper and materials so concealed. 21 G. 3. c. 24. *f.* 26.

He shall keep separate the paper which is unsurveyed, for forty-eight hours after making, unless it shall be sooner surveyed by the officer, on pain of 20*l.* *Id.* *f.* 25.

And once in six weeks he shall make entry on oath, of himself or his chief workman, at the next excise-office, of all paper made by him fit for use, the kinds and quantities, on pain of 50*l.* But that no person shall be obliged to go to make entry further than the next market-town. 21 G. 3. c. 24. *f.* 11.

And by the same statute, *f.* 20, The maker, if in a market-town, shall give twenty-four hours, elsewhere forty-eight hours notice, in writing, before he intends to remove any paper, of the hour or time of the day he intends to have it charged with the duty; and if he shall not attend at the time, or within one hour after, the notice shall be void.

The officer shall attend agreeable to such notice; and the maker shall produce to him all the paper then to be charged, tied up in covers or wrappers, containing one ream, or one bundle each, and thereon shall be marked, in large legible characters, and in words at length, the true denomination of such paper. And the officer may open any ream or bundle, and take samples (paying one penny a sheet if demanded); and if any fraud shall be discovered, the ream or bundle shall be forfeited, together with 50*l.* *f.* 21, 22.

And when the officer shall be satisfied that each ream and bundle is properly tied and inclosed, he shall forthwith stamp the same. *f.* 23.

And any person who shall counterfeit the stamp, shall forfeit 500*l.* and be imprisoned for twelve months. *f.* 31.

And the maker shall, within six weeks after making his entry, pay and clear off the duties, on pain of double duty. 21 G. 3. c. 24. *f.* 12.

Should any paper be damaged, by the casting away or sinking of the vessel in which it shall be carried from one part

part of the kingdom to another, the justices in sessions, on three days notice given to the collector, may make a proportionable allowance; to be repaid by the collector, or deducted by the proprietor out of his next payment. 21 G. 3. c. 24. s. 18, 19.

By the 26 G. 3. c. 78, after September 1, 1786, Every paper-stainer shall, once in every fortnight, make entry in writing, on oath, or on the oath of his chief workman, at the next office for the said duties, of all paper by him printed, painted, or stained, within that time, and such entry shall contain the kinds and quantities thereof respectively, on pain of 50l. s. 2.

And by the 27 G. 3. c. 13, For every yard square of paper which shall be printed, painted, or stained, in Great-Britain, to serve for hangings or other uses (besides the duties payable for such paper before the printing thereof) shall be paid by the printer, painter, or stainer, 1½d.

And every such paper-stainer shall, within a fortnight after making entry, pay the duties for all such paper, on pain of forfeiting double duty: and no person, after default in payment, shall sell or deliver out any paper, till he has paid the duty, on pain of forfeiting double the value thereof. Id. s. 3.

And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and he shall stamp or seal every sheet and piece, to denote that such account has been taken; and where a single sheet shall be painted, it shall be produced to the officer, who shall take an account of it; and if he shall find that every sheet is marked or stamped, he shall measure the same; and mark such sheet at both ends, with a frame-mark, denoting the measure thereof, and with such other number or mark as the commissioners shall direct: and any person who shall begin to print, paint, or stain any sheet of paper, before it is so measured and marked, shall forfeit 50l. and also such paper, which may be seized. Id. s. 5.

And as soon as any paper shall have been printed, painted, or stained, with any colour or figure, the officer shall take an account and charge the duties, and shall stamp every piece, where a single sheet, at both ends: and if any stainer shall remove or send away any piece or sheet of such paper before it has been taken account of and stamped, he shall forfeit 50l. together with such paper, which may be seized. Id. s. 9.

And where an officer shall miss any quantity of paper, of which he had so taken an account, and shall not on reasonable

Paper-stainers to make entry.

Duty on painted or stained paper for hangings.

Duties to be paid.

Paper to be measured and marked before painting.

To be marked after painting

Officers to charge for paper missing.

able demand, receive satisfaction what is become of it, he may charge the duties for it. 1 G. 3. c. 36. s. 17. 26 G. 3. c. 78. s. 10.

Pieces cut into samples.

And by the 26 G. 3. c. 78. s. 8, Pieces cut into samples or remnants, shall be stamped by the officer, to whom six hours notice shall be given by such stainer, of the time he intends to cut the same.

Paper not to be removed till an account is taken.

No person shall remove any such painted paper, till the officer has taken an account of the quantity thereof, and till every piece or parcel shall be marked or stamped, on pain of 20l; and the said paper, being found in the possession of any stationer or other dealer, or other person for his use, shall also be forfeited. 1 G. 3. c. 36. s. 18.

Paper unsurveyed to be kept separate.

And every paper-stainer shall keep such paper by him printed, painted, or stained, which has not been stamped and charged with the duties, separate from that which has been charged, on pain of 50l. 26 G. 3. c. 78. s. 11.

Penalty on keeping paper in unentered places.

And no stainer of paper, shall keep any paper which has been marked and stamped in an unentered place: and if any paper which has been printed, painted, or stained, whether marked or stamped, or not, shall be found in his possession, in such unentered place, he shall forfeit 50l. together with the paper, which may be seized. *Id.* s. 16.

Fraudulently concealing paper.

If any stainer shall fraudulently conceal any printed, painted, or stained paper, with intent to defraud his majesty, he shall forfeit 100l. 26 G. 3. c. 78. s. 11.

Suspected places may be searched, on oath of having reason to suspect.

And by the same statute, s. 17, Upon oath before two commissioners, or one justice, by any person, that he has reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereon such stamp as this act directs, the said commissioners or justice may issue their warrant or order, authorising any officer for the said duties, with the assistance of a constable, in the day-time, to search for it, and to open doors, chests, trunks, and packages, and to seize such paper, and bring it to the next excise-office, which shall be forfeited: and any person who shall obstruct or hinder any such officer, from entering any such place, and in seizing and carrying away such paper, he shall forfeit 50l. But no remnant, being of less length than shall be expressed by the frame-mark thereon, so found with the stamp at one end thereof, shall be forfeited, by reason of not having the stamp at both the ends.

Paper marked at one end only, forfeited.

And in order to prevent fraud by adding to the length of any piece of stained paper, after it has been stamped at both ends, if any piece or remnant of stained paper, not having such

such stamp and frame-mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame-mark; or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame-mark, it shall be forfeited, and may be seized, and the stainer or dealer in whose possession it shall be found, shall forfeit 50*l.* *s.* 18.

Any stainer who shall wilfully cut out, obliterate, or deface any mark or stamp, or wilfully suffer the same to be done: or shall by any means affix upon any piece of paper, any frame-mark or stamp which shall have been before affixed on any other piece of paper, with intent to defraud his majesty, shall forfeit 50*l.* *Id.* *s.* 14, 15.

Defacing or obliterating marks.

Or if any person shall counterfeit or forge any frame-number, or mark used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100*l.* Or if any person shall counterfeit or forge any stamp or seal to resemble those provided in pursuance of this act, or the impression of the same upon any paper, in order to defraud his majesty, he shall be guilty of felony without benefit of clergy: and any person who shall sell any paper with such counterfeit stamp, knowing the same, with like intent, shall forfeit 100*l.*

Counterfeiting or forging stamps, or selling paper with counterfeit stamps.

By the 27 G. 3. c. 13, Certain duties are imposed on paper imported, as particularly set forth in a table annexed to that act.

Paper imported.

And by the 11 G. c. 7. *s.* 10, Old rags, old ropes, junks, or old fishing-nets may be imported duty free.

Rags, &c. imported.

Paper, having paid the duty, may be exported; on security being given that it shall not be reloaded. Should it be reloaded, it shall be forfeited, over and above the penalty of the bond. 21 G. 3. c. 24. *s.* 32, 33.

Paper exported.

And, on exportation, a drawback of the duties shall be allowed; on the exporter's giving notice, to the proper officer of the customs, when and where he shall put up the goods to be exported; who shall attend accordingly, and take an account of the quantity and kinds, and see that the stamps are taken off from each ream or bundle. *s.* 34, 35.

Drawback allowed on exportation.

And the officer attending to see the same packed for exportation, shall take off the stamp from each ream or bundle; and if any person shall obstruct or hinder him, he shall forfeit 50*l.* 26 G. 3. c. 77. *s.* 5.

Officer to take off the stamps.

By the 26 G. 3. c. 78. *s.* 19, No printed, painted, or stained paper, shall be permitted to be packed up for exportation, not having the stamps by this act directed; and also the frame-marks plain at both ends of every piece, where a

able demand, receive satisfaction what is become of it, he may charge the duties for it. 1 G. 3. c. 36. s. 17. 26 G. 3. c. 78. s. 10.

Pieces cut into samples.

And by the 26 G. 3. c. 78. s. 8, Pieces cut into samples or remnants, shall be stamped by the officer, to whom six hours notice shall be given by such stainer, of the time he intends to cut the same.

Paper not to be removed till an account is taken.

No person shall remove any such painted paper, till the officer has taken an account of the quantity thereof, and till every piece or parcel shall be marked or stamped, on pain of 20l; and the said paper, being found in the possession of any stationer or other dealer, or other person for his use, shall also be forfeited. 1 G. 3. c. 36. s. 18.

Paper unsurveyed to be kept separate.

And every paper-stainer shall keep such paper by him printed, painted, or stained, which has not been stamped and charged with the duties, separate from that which has been charged, on pain of 50l. 26 G. 3. c. 78. s. 11.

Penalty on keeping paper in unentered places.

And no stainer of paper, shall keep any paper which has been marked and stamped in an unentered place: and if any paper which has been printed, painted, or stained, whether marked or stamped, or not, shall be found in his possession, in such unentered place, he shall forfeit 50l. together with the paper, which may be seized. *Id.* s. 16.

Fraudulently concealing paper.

If any stainer shall fraudulently conceal any printed, painted, or stained paper, with intent to defraud his majesty, he shall forfeit 100l. 26 G. 3. c. 78. s. 11.

Suspected places may be searched, on oath of having reason to suspect.

And by the same statute, s. 17, Upon oath before two commissioners, or one justice, by any person, that he has reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereon such stamp as this act directs, the said commissioners or justice may issue their warrant or order, authorising any officer for the said duties, with the assistance of a constable, in the day-time, to search for it, and to open doors, chests, trunks, and packages, and to seize such paper, and bring it to the next excise-office, which shall be forfeited: and any person who shall obstruct or hinder any such officer, from entering any such place, and in seizing and carrying away such paper, he shall forfeit 50l. But no remnant, being of less length than shall be expressed by the frame-mark thereon, so found with the stamp at one end thereof, shall be forfeited, by reason of not having the stamp at both the ends.

Paper marked at one end only, forfeited.

And in order to prevent fraud by adding to the length of any piece of stained paper, after it has been stamped at both ends, if any piece or remnant of stained paper, not having such

such stamp and frame-mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame-mark; or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame-mark; it shall be forfeited, and may be seized, and the stainer or dealer in whose possession it shall be found, shall forfeit 50*l.* *f.* 18.

Any stainer who shall wilfully cut out, obliterate; or de- face any mark or stamp, or wilfully suffer the same to be done: or shall by any means affix upon any piece of paper, any frame-mark or stamp which shall have been before af- fixed on any other piece of paper, with intent to defraud his majesty, shall forfeit 50*l.* *Id.* *f.* 14, 15.

Defacing or ob- literating marks.

Or if any person shall counterfeit or forge any frame- number, or mark used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100*l.* Or if any person shall counterfeit or forge any stamp or seal to resemble those provided in pursu- ance of this act, or the impression of the same upon any paper, in order to defraud his majesty, he shall be guilty of felony without benefit of clergy: and any person who shall sell any paper with such counterfeit stamp, knowing the same, with like intent, shall forfeit 100*l.*

Counterfeiting or forging stamps, or sell- ing paper with counterfeit stamps.

By the 27 G. 3. c. 13, Certain duties are imposed on paper imported, as particularly set forth in a table annexed to that act.

Paper imported.

And by the 11 G. c. 7. *f.* 10, Old rags, old ropes, junks, or old fishing-nets may be imported duty free.

Rags, &c. im- ported.

Paper, having paid the duty, may be exported; on secu- rity being given that it shall not be reloaded. Should it be reloaded, it shall be forfeited, over and above the penalty of the bond. 21 G. 3. c. 24. *f.* 32, 33.

Paper ex- ported.

And, on exportation, a drawback of the duties shall be allowed; on the exporter's giving notice, to the proper of- ficer of the customs, when and where he shall put up the goods to be exported; who shall attend accordingly, and take an account of the quantity and kinds, and see that the stamps are taken off from each ream or bundle. *f.* 34, 35.

Drawback al- lowed on ex- portation.

And the officer attending to see the same packed for ex- portation, shall take off the stamp from each ream or bun- dle; and if any person shall obstruct or hinder him, he shall forfeit 50*l.* 26 G. 3. c. 77. *f.* 5.

Officer to take off the stamps.

By the 26 G. 3. c. 78. *f.* 19, No printed, painted, or stained paper, shall be permitted to be packed up for expor- tation, not having the stamps by this act directed; and also the frame-marks plain at both ends of every piece, where a

Pardon.

single sheet; and the officer attending to see such paper packed up, shall measure it, and see that the said stamps and frame-marks are cut off from both ends of every piece or single sheet.

But no person shall be entitled to any drawback upon the exportation of paper that shall not have such stamp or seal at both ends thereof. *s. 7.*

Utensils and
materials liable.

By the 10 *Ann. c. 19. s. 55*, All paper, materials, and utensils in the custody of the maker, or any other person to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, as if the offender or debtor were the lawful owner.

And all the excise laws shall be in force for managing these duties; and the penalties shall be sued for, mitigated, levied, and disposed of as by the laws of excise, or they may be recovered in the courts at *Westminster*.

For the stamp-duties on paper, see titles STAMPS and NEWS-PAPERS.

Papists. See POPERY.

Parchment. See STAMPS.

Pardon.

Pardon, what.

PARDON is the remitting or forgiving a felony, or other offence committed against the king; and this is two-fold, one *ex gratia regis*, the other *per course de la ley*. Staundf. Pl. cor. 47. Pardon *ex gratia regis*, is that which the king, in some special regard of the person or other circumstance, affords upon his absolute prerogative. Pardon *by the course of law*, is that which the law in equity affords for a light offence; as *homicide casual*, when one person kills another without any intention so to do. *West. Symbol. p. 2. s. 46.*

Lord Coke's
definition of
pardon.

Lord Coke thus defines a pardon: it is a work of mercy, whereby the king, either before the attainder, sentence, or conviction, or after, forgives any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. *3 Inst. 233.*

The power of
pardoning of-
fenders insepa-
rably incident
to the crown.

The power of pardoning offences is inseparably incident to the crown; and this high prerogative the king is entrusted with, upon a special confidence, that he will spare those only whose case, could it have been foreseen, the law itself

itself may be presumed willing to have excepted out of its general rules, which the wisdom of man cannot possibly make so perfect as to suit every particular case. 1 Show. 284.

Pardons are either *general* or *special*: *general*, as by act of parliament; of which, if they are without exceptions, the court must take notice *ex officio*; but, if there are exceptions therein, the party must aver that he is none of the persons excepted. 3 Inst. 233. Hale's Pl. 252. General pardon.

Special pardons are either of course, as to persons convicted of manslaughter, or *se defendendo*, and by several statutes to those who shall discover their accomplices in several felonies; or, of grace, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded. 3 Inst. 233. Special pardon.

There is also a kind of *conditional pardon*, frequently extended by his majesty, occasioned by favourable circumstances or strong interest: *Maximilian Miller* was convicted of grand larceny, in January session 1771, and received judgment of transportation to *America* for the term of seven years. On the 22d of *April* following he obtained the *sign manual*, signifying to the recorder and sheriffs of *London*, his majesty's intention to pardon the said crime, "Upon condition of his giving security, to the satisfaction of the recorder, to leave the kingdom within the space of fourteen days from the date thereof, and not to return for the space of seven years:" and ordering, "That the said *Maximilian Miller* be, on his giving such security as aforesaid, immediately discharged out of custody; and that he be inserted, for his crime above-mentioned, in the first and next general pardon that shall come out for the poor convicts in Newgate." On the 23d of *April* this *sign manual* was delivered to the recorder, and the same day two sureties entered into a recognizance of 100*l.* each, "to be void if *Maximilian Miller*, then a prisoner in Newgate, did, within the space of fourteen days from *April* 22, transport himself out of the kingdom of *Great-Britain*, &c. and did not return, nor was found at large within the kingdom of *Great-Britain* within the term of seven years next ensuing." Upon this recognizance being compleated, the recorder made his warrant to the keeper of Newgate, by virtue whereof the prisoner was discharged out of custody. On the 26th of *November* following, he was apprehended in *Piccadilly*, and indicted for a capital offence at the ensuing *December* session at the Old Bailey, for being found at large in *Great-Britain*, without any lawful cause, before the expiration of his term. The record of his conviction was produced, his person identified,

identified, and his being at large proved; and he offered to give in evidence the *sign manual*, with its attendant circumstances, as above stated, in his defence. Upon which the jury were directed to find the prisoner guilty, subject to the opinion of the twelve judges upon the following questions: First, Whether the *sign manual* ought to have been received in evidence? Secondly, Whether, if it had been received, the prisoner could have availed himself of it, as he had not substantially performed the condition of his intended pardon? No solemn adjudication has ever been publicly communicated upon this case; but it is reported (see 2 *Blackst. Rep.*) that all the judges, except lord chief-justice *De Grey*, met at lord *Mansfield's* chambers on the first day of *Hilary* term 1772, and that they were unanimously of the following opinion: First, That the *sign manual* ought to have been received in evidence; for though it was only significant of the king's intention to pardon, and therefore might be revoked; yet, as it was an authority for the judge to admit the prisoner to bail, it was evidence of a lawful cause for his appearing at large. Secondly, That the *sign manual* was improperly worded, by the mistake of the officer; for it should have been, "Upon condition of the said *Maximilian Miller* transporting himself, &c. and of his giving security to the satisfaction of the recorder," and not merely on condition of his security, &c. That the king might revoke his intended grace on account of this apparent fraud; but, as he had not in fact revoked it, and as the prisoner had literally complied with the condition, he ought not to have been convicted upon this indictment. The prisoner was referred to his original sentence of transportation, as not having performed the condition upon which his pardon was to be granted. *Leach's Cas. in Cr. Law.* 73.

Pardon should contain the suggestion.

Pardon to specify the offence.

The king cannot pardon an appeal.

By the 27 *Ed. 3. c. 2*, In every charter of the pardon of felony, the suggestion, and the name of him who makes the suggestion, shall be comprized; and if it be found untrue, the charter shall be disallowed.

And by the 13 *R. 2. st. 2. c. 1*, No charter or pardon shall be allowed for murder, treason, or rape, unless the offence be specified therein.

The king cannot pardon any offence before it is committed, such pardon being void. 2 *Haw.* 389.

The release of the party will not bar an indictment at the suit of the king; nor will a pardon by the king be any bar to an appeal at the suit of the party. 2 *Haw.* 392. See title APPEAL.

It

It is laid down in general, that the king may pardon any offence whatever, whether against the common or statute law, so far as the public is concerned in it, after it is over, and consequently may prevent a popular action on a statute, by pardoning the offence before the suit is commenced; but it seems, that he cannot wholly pardon a public nuisance while it continues such, because such pardon would take away the only means of compelling a redress of it; yet it is said, that such a pardon will save the party from any fine to the time of the pardon. 12 Co. 29, 30. 3 Inst. 237. 2 Haw. 391.

The king cannot wholly pardon a nuisance.

Also if a person be bound by recognizance to the king, to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognizance, though it be made only to him, because it is for the benefit and safety of his subjects. 3 Inst. 238.

Nor discharge a recognizance.

So if an action popular is brought, *as well for the king as for the informer*, according to any statute, the king can only discharge his own part, and not the informer's; because, by bringing of the action, the informer has an interest therein: but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the party grieved, the king cannot discharge it. 3 Inst. 231.

The king cannot release an information qui tam.

A pardon will not only discharge any suit in the Spiritual Court *ex officio*, but also any suit in such court, at the instance of the party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such like; for such suits are in reality the suits of the king, though prosecuted by the party: and if the time to which the pardon has relation, be prior to the award of the costs to the party, or as it is generally holden, if it be subsequent to the award, but prior to the taxation, it shall discharge them, but not if it be subsequent to the taxation; and the same rule holds as to costs taxed to the party grieved on a contempt in a court of equity; but it is doubtful as to costs taxed by the prothonotary on an attachment; for they are not given by the court of course; but the offender submits only to pay them by way of composition. Cro. Jac. 335. 2 Haw. 394.

He may discharge a suit in a spiritual court.

But no pardon will discharge a suit in the Spiritual Court, any more than in a temporal, for a matter of interest or pro-

Exceptions.

A wound,
which after par-
don proved a
homicide.

perty in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. 2 *Haw.* 394.

It is said, that a general act of pardon of all felonies, misdemeanors, and other things done before such a day, pardons a homicide from a wound before the day, whereof the party did not die till after; because, the stroke being pardoned, the effects of it are consequently pardoned. *Plowd.* 461. *Cole's case.* 1 *H. H.* 426.

A person par-
doned may be
bound to the
good behaviour.

By the 5 *W. c.* 13, When a pardon is pleaded for any one for felony, the justices may at their discretion remand him to prison, till he enter into a recognizance, with two sureties, for his good behaviour, for any time not exceeding seven years.

Pardon restores
a man's credit.

It seems a settled point, that the pardon of treason and felony, even after a conviction or attainder, so far clears the party from the infamy and all other consequences of his crime, that he may not only have an action for scandal in calling him traitor and felon, after the time of his pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But does not re-
store lands or
goods forfeited.

But it seems clear, that no pardon by the king, without express words of restitution, shall divest, either from the king or subject, an interest either in lands or goods, vested in them by an attainder or conviction precedent: yet it seems agreed, that a pardon, prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Nor corruption
of blood.

A pardon after the attainder does not restore the corruption of blood, for that cannot be done but by act of parliament. 3 *Inst.* 233.

Issue born after
pardon.

But with respect to issue born after the pardon, it has the effect of the restitution of blood. 1 *H. H.* 358.

A pardon for
perjury does not
restore credit.

It seems however the better opinion, that the pardon of a conviction of perjury, does not so far restore the party to his credit, as to make him a good witness; because it would be an injury to the people in general to make them subject to the testimony of such a person. 1 *Vent.* 349.

A pardoned ob-
tained from the
king by imposi-
tion, is void.

It is laid down as a general rule, that wherever it appears by the recital of the pardon, that the king was misinformed, or not rightly apprized both of the heinousness of the crime, and how far the party stands convicted upon record, the pardon is void, on a presumption that it was gained from the king by imposition. *Cro. Jac.* 18, 34, 548. 3 *Inst.* 338.

No

No pardon of felony shall be carried beyond the express purport of it; therefore if the king, reciting an attainder of robbery, pardon the *execution*, he thereby neither pardons the felony itself, nor any other consequence of it but the *execution*. 6 Co. 13. 2. Haw. 384.

A pardon cannot be extended beyond its purport.

Parliament.

I. Preliminary Matters.

II. Freedom of Election.

III. Qualification of the Candidates, and therein of polling.

IV. Qualification of the Electors.

V. Return.

VI. Privilege of Parliament.

VII. Duration of Parliament.

I. Preliminary Matters.

PARLIAMENT is deduced from the French *parler*, to speak, and *ment, mens*, the mind. We cannot trace out exactly the origin and antiquity of the supreme court of parliament, whose transcendent jurisdiction, says lord Coke, is such, that it makes, enlarges and diminishes, abrogates, repeals, and revives laws, statutes, acts, and ordinances concerning matters ecclesiastical, capital, criminal, common, civil, martial, maritime, &c. To point out the several alterations it met with, and how it came to be modelled in the shape we now see it, seems indeed, if not impossible, a work of the greatest difficulty; but this difficulty is not to be attributed to any peculiar defect in our constitution, but only to time, and the loss and destruction of our records, especially in the Barons' wars: nor have the prejudices and different views, which have conducted the pens of those who have written on this subject, contributed a little to obscure and perplex the matter. Co. Litt. 110, 4 Inst. 36.

Of its origin,

It appears, however, by those lights which we have still remaining, and from the enquiries and reasonings of our best antiquaries, that there has always been something of the nature of a parliamentary assembly, as ancient as any thing which

which we know of our constitution, in which the people shared with the prince in the legislative power. *Spelm. Gloss. in verb. Parl. Pryn's Right of the Commons.* 99.

The great controversy, with respect to the origin and antiquity of parliaments, relates chiefly to the power and first formation of a house of commons after the conquest. Some have asserted that they have been always part of the ancient constitution, and that the commons of *England*, by their representatives, have always composed a part of that august assembly; others hold, that the house of commons was formed 49 *Hen. 3.* when the king had given an overthrow, at the battle of *Evesham*, to *Simon Mountford*, earl of *Leicester*, and the barons which adhered to him; and, to derogate from the power of the commons, and to lay aside parliaments, a notion was propagated in *Charles the Second's* reign, that the first arose by the art and management of *Simon Mountford*, to be a balance to the crown and peerage; and that their first institution was the invention of a rebel to serve a particular purpose. *Sir Rob. Atkins's Power and Jurisdiction of Parliaments* 14. and others. *Camden's Britannia* 13.

But the most probable opinion is, that the house of commons was instituted by the crown, as a balance to the barons, who were grown very opulent and numerous; and, as appears by their wars, very troublesome to the crown. *Spelm. Gloss. 67. Seld. Tit. Hon. 692.*

One of the principal reasons for establishing a house of commons was, for the more convenient taxing of the people. Hence we find the real reason why all taxation began in that house, and why the commons would never after suffer it to be altered. They were at first instructed by their principals, whom they represented, to give what each man supposed he could bear, and consequently that, to vary from these instructions, or to suffer the superior peerage to interfere, would, as they rightly judged, be the highest breach of trust in them.

At the first institution of a house of commons, the representatives of knights, citizens, and burgesses, were only considered as trustees to manage the affairs of their principals; therefore it was formerly held reasonable that they should be recompenced by their principals, for their trouble and expence in managing the trust reposed in them. Hence the fee of every knight of the shire was 4*s.* per day, and that of a citizen or burgess 2*s.* per day. 4 *Inst.* 46.

Though the term *parliament* comprehends the three estates of the kingdom, the house of commons principally demands our attention under this head.

By

By the 7 and 8 *W. c. 25*, When any new parliament shall be summoned, there shall be forty days between the teste and return of the writ; and, both upon the calling of a new parliament, and upon a vacancy in parliament time, the writ shall be delivered to the proper officer to whom the execution thereof belongs, and to no other person: and every such officer, on receipt of the writ, shall indorse thereon the day which he received it. *f. 1.*

Manner of proceeding to election.

Knights of the shire, otherwise called knights of parliament, are two knights or gentlemen of worth, chosen upon the king's writ, by the freeholders of every county. These, when every man who had a knight's fee was constrained to be a knight, were under the necessity of being *knights*; but now custom admits esquires to be chosen to that office. Still, however, they are called knights of the shire.

Election of knights of the shire.

On the election of a knight of the shire, the sheriff shall, within two days after the receipt of the writ, cause proclamation to be made, at the place where the ensuing election ought by law to be holden, of a special county court to be there holden for the purpose of such election only, on any day (*Sunday* excepted) not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and shall proceed in such election, at such special county court, in the same manner as if the said election was to be held at the county court, or an adjournment thereof, according to the laws now in being. *25 G. 3. c. 84. f. 4.*

Provided, that the usual county court for all other purposes, or any adjournment thereof, may be held and proceeded in by the sheriff, in the same manner, and at the same times and places, as if the writ for the election of a knight of the shire had not been received. *Id.*

And by the 7 & 8 *W. c. 25*, The sheriff shall appoint such a number of clerks as he shall think fit for taking the poll in the presence of himself or deputy. Which clerks, before they begin, shall be sworn by the sheriff or undersheriff truly and indifferently to take the poll, and to set down the names of each freeholder, and the place of his freehold; and for whom he shall poll, and to poll no freeholder who is not sworn, if so required by any of the candidates. *f. 3.*

Clerks appointed to take the poll.

And the sheriff shall admit one person for each candidate to be inspector of the clerks. *Id.*

Inspectors.

And by the 18 *G. 2. c. 18. f. 7*, The sheriff shall, at the expence of the candidates, erect such a number of booths for taking the poll, as the candidates or any of them shall, three

Booths to be erected at the expence of the candidates.

three days at least before the commencement of the poll, desire; not exceeding the number of hundreds or other like division, and not exceeding fifteen in the whole; and shall affix, on the most public part of each, the name of the hundred for which such booth is designed.

Shall deliver a list of towns, &c.

And he shall make a list for each booth of the several towns, parishes, and hamlets, wholly or in part within such hundred; and shall on request deliver a copy to any of the candidates, paying for the same 2s. *Id.*

And shall appoint clerks at each booth to take the poll, who are to be paid by the candidates, not exceeding each one guinea a day. *Id.*

Cheque books.

And the sheriff shall also allow a cheque-book for every poll-book, for each candidate; to be kept by their inspectors, at every place where the poll shall be taken. *Id.* §. 9.

Proceeding to election in cities, boroughs, and towns corporate.

With respect to the election of members of parliament for cities, boroughs, and towns corporate, the sheriff or other officer shall, on receiving the writ, forthwith make out a precept to each borough, town-corporate, or place within his jurisdiction where any members are to be elected, and within three days (and in the cinque ports within six days, 10 & 11 *W. c.* 7.) after receipt of the said writ, shall by himself or proper agent deliver the precept to the proper officer of such borough, town-corporate, or place within his jurisdiction, to whom the execution of such precept belongs, and to no other person whatsoever: and every such officer shall indorse the day of his receipt thereof in the presence of the party of whom he received the same, and shall forthwith cause public notice to be given of the time and place of election, and proceed to election within eight days after receipt of the precept, giving four days notice at least of the day appointed for the election. 7 & 8 *W. c.* 25. §. 1.

In a city or town, being a county of itself.

And by the 19 *G. 2. c.* 28, In a city or town, being a county of itself, the sheriff shall forthwith, on receipt of the writ, give public notice of the time and place of election, and proceed to election thereupon, within eight days next after the receipt of the writ, and give three days notice thereof at least, exclusive of the day of the receipt of the writ and of the day of election: and he shall allow a cheque-book for every poll-book for each candidate, to be kept by their inspectors at the place of taking the poll. §. 6, 7.

II. Freedom of Election.

The 3 *Ed. 1. c. 5*, enacts, That, because elections ought to be free, the king commands upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election.

And by the declaration of rights, 1 *W. sess. 2. c. 2*, it is declared, That elections of members of parliament ought to be free: and that freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

By the 9 *Ann. c. 10. s. 44*, No officer of the *post-office* shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote in any election.

And there is the same provision with respect to the officers of the *customs*, by the 12 & 13 *W. c. 10*.

Also by the 5 *W. c. 20*, and the 9 *Ann. c. 11. s. 45*, Officers of *excise* are restricted in the same manner.

And the 8 *G. 2. c. 30*, enacts, That, on notice of an election, the secretary at war shall send orders for the removal of soldiers, one day at least before the election, and they shall not be permitted to return till after the poll shall be closed; but this not to extend to the guards, nor to any castle or fortified place, where a garrison is usually kept: nor to any officer or soldier having right to vote at such election.

III. Qualification of the Candidates, and therein of polling.

By the 30 *C. 2. s. 2. c. 1*, it is enacted, That no papist shall sit in either house of parliament.

And by the 7 & 8 *W. c. 25*, No infant under the age of twenty-one years shall be capable of being elected. *s. 8*.

Neither shall any person having a pension from the crown for any term of years, be capable of being elected. 1 *G. s. 2. c. 56*.

Sir *William Blackstone* says, the following persons are not capable of being elected, or sitting as members of parliament, viz. no person concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury: no commissioners of prizes, trans-

Elections to be free.

And freedom of debate to be allowed.

No officer of the post-office to interfere in elections.

Nor of the customs.

Soldiers to be removed before the day of election.

Papist not qualified.

Infant.

What placemen, &c. are incapable of being elected,

ports,

ports, sick and wounded, wine licenses, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of *Minorca* or *Gibraltar*; officers of the excise and customs; clerks or deputies in the several offices in the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licences, hackney coaches, hawkers and pedlars; nor any persons who hold any new office under the crown created since 1705. 1 *Blackst.* 175.

If any member shall accept an office of profit from the crown, while he shall continue member (offices of the army and navy excepted), his election shall be void, and a new writ shall issue: but he shall be capable of being re-elected. 6 *Ann. c. 7. s. 26.*

Pensioner during pleasure.

By the same statute, *s. 25*, No person having a pension from the crown during pleasure, shall be capable of being elected.

Contractors.

By the 22 *G. 3. c. 41*, All persons holding contracts made with the commissioners of the treasury, navy, victualling-office, or board of ordnance, for or on account of the publick service, shall, while they shall hold such contracts, be incapable of being elected, or of sitting or voting in the house of commons.

Qualification by estate.

No person shall be capable of sitting or voting in the house of commons for a county, unless he has an estate freehold or copyhold, for his life, or some greater estate, of the clear yearly value of 600*l.*; nor for a city or borough, unless he has a like estate of 300*l.* And any other candidate, or two electors, may, on reasonable request to him made (at the time of the election, or before the day prefixed for the meeting of the parliament), require him to take the following oath:

Candidate's oath.

" I *A. B.* do swear that I truly and *bona fide* have such an
 " estate in law or equity, to and for my own use and bene-
 " fit, of or in lands, tenements, or hereditaments, over and
 " above what will satisfy and clear all incumbrances that may
 " affect the same, of the annual value of above re-
 " prizes, as doth qualify me to be elected and returned to
 " serve as a member for the of according to
 " the tenor and true meaning of the act of parliament in
 " that behalf; and that my said lands, tenements, or here-
 " ditaments are lying or being within the parish, township,
 " or precinct of" (as the case shall be.) And such oath
 shall be administered by the returning officer or two jus-
 tices,

tices, who shall in three months certify the same into the Chancery or King's Bench. But this not to extend to the eldest son of a peer, or of any person qualified to serve as knight of a shire, nor to the members for either of the two universities. 9 Ann c. 5.

And by the 33 G. 2. c. 20, Every member, before he shall vote in the house of commons, or sit there during any debate, shall, after the speaker is chosen, deliver in at the table in the middle of the house, whilst the house is there sitting, with the speaker in the chair, an account signed by such member, containing the name of the place where his qualification lies, declaring it to be of the annual value of 600*l.* above reprises, if a knight of a shire; and of 300*l.* if a citizen, burgher, or baron of the cinque ports; and shall also at the same time take and subscribe the oath following:

"I A. B. do swear, that I truly and *bona fide* have such
"an estate in law and equity, and of such value, to and for
"my own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all
"incumbrances that may affect the same, as doth qualify me
"to be elected and returned to serve as a member for the
"place I am returned for, according to the tenor and true
"meaning of the acts of parliament in that behalf; and that
"such lands, tenements, and hereditaments do lie as described in the paper or account signed by me, and now delivered to the clerk of the house of commons. So help
"me God." But this also shall not extend to the eldest son or heir-apparent of a peer, or of any person qualified to serve as a knight of a shire, or to the members of either of the universities.

IV. Qualification of the Electors.

By the 6 Ann. c. 23. s. 13, Every elector, before he is admitted to vote, shall, if required, take the oath of abjuration.

And by the 7 and 8 W. c. 25. s. 8, No person shall be admitted to vote under the age of twenty-one years. No infant shall vote.

By the 22 G. 3. c. 41, it is enacted, That no person employed in managing the duties of excise, customs, stamp-duties, salt, houses and windows, or revenue of the post-office, shall be capable of voting for a member to serve in parliament; and if he shall presume to vote while he shall hold such office, or within twelve calendar months after he shall have Person employed in the revenue are incapable of voting.

have ceased to hold it, his vote shall be void, and he shall forfeit 100/.

Freehold of
40s. a year.

And by the 8 H. 6. c. 7, Every elector of a knight of the shire shall have land or tenement to the value of 40s. a year at least, above reprises: and the sheriff shall have power to examine upon oath every such chuser how much he may expend by the year.—And by the 10 H. 6. c. 2, the said 40s. a year must be freehold.

And by the 18 G. 2. c. 18, No person shall vote for a knight of the shire, without having a freehold estate in the county, of the clear yearly value of 40s. over and above all rents and charges payable out of the same *f. 5.*

But taxes and assessments shall not be deemed a charge payable out of the lands. *f. 6.*

And no person shall vote in any election more than once. *Same stat. f. 5.*

Fraudulent conveyance.

No person shall vote for any estate granted to him fraudulently, on purpose to qualify him to give his vote. *Id.*

And all such conveyances fraudulently made to qualify any person to vote, subject to conditions to defeat the same, shall be deemed as absolute against the person executing the same, and discharged of all trusts, conditions, and other defeazances; and all bonds, covenants, or other securities for defeating or reconveying the same, shall be void. 10 An. c. 23. *f. 1.*

Splitting votes.

And, by the 7 and 8 W. c. 25. *f. 7.* All conveyances to multiply voices, or to split votes, shall be void; and only one voice shall be admitted for one and the same house or tenement.

Mortgager or
trust estate.

The mortgager or *cestui que trust* shall vote; and not the trustee or mortgagee, unless he be in actual possession. *Id.*

Tenant in
dower.

By the 20 G. 3. c. 17, Husbands of women entitled to dower out of the estates of their former husbands, may vote in respect thereof, though such dower has not been set out by metes and bonds; provided that the dower be worth 40s. a year, and the husband in the actual receipt of the profits thereof. *f. 12.*

Possession for
twelve months
to qualify.

But no person shall vote for a knight of the shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents or profits thereof for his own use, above twelve calendar months; unless the same came to him by descent, marriage, marriage-settlement, devise, or promotion to a benefice or office. 18 G. 2. c. 18. *f. 5.*

Repeal of 20 G.
3. c. 17, &c.

By the 28 G. 3. c. 36, it is enacted, That from the 10th of July 1790, the 20 G. 3. c. 17, shall be repealed, as far

as it relates to the election of any member of parliament; and also all such parts of 18 G. 2. c. 18, (and such parts of any other act) as disable any person to vote for any messuages, lands, or tenements, which have not been assessed towards the land-tax. *f. 32, 33.*

And the better to ascertain the rights of persons claiming to vote for knights of the shire to serve in parliament, the king's printer shall provide such number of registers as shall be required, of the form N^o 1. in the schedule annexed to the act, and shall transmit them to the clerks of the peace of every county, by March 5, 1789. *f. 1.*

Registers to be provided by the king's printer.

And the clerk of the peace shall deliver one of such registers to every register-keeper within each respective county, who shall give a receipt (schedule 2.) for the same. *Id.*

And delivered to the register-keepers.

And every *parish* shall have a register-keeper, and where parishes are subdivided into *districts*, to every *district*, whether township, quarter, hamlet, parochial, chapelry, constablewick, or other, for which separate collectors of the land-tax are appointed, shall be deemed a *parish*, for the purposes of this act; and the collector of the land-tax for each district, shall be *register-keeper* for such district; and where joint collectors are appointed, the person first named in the appointment shall be *register-keeper*: and in case of the death, illness, or absence of the person first named, the next person named shall act as *register-keeper* for such place. And if at any time there shall be no land-tax granted, or in case of the death, illness, or absence of any such collector, or if from any other cause there shall be no collector of the land-tax appointed, the constable of such district (or officer performing the like duty,) shall act as *register-keeper*. And every such *register-keeper* shall carefully preserve the said register, which shall be called *the Register of Freeholders* for *district*; and shall be delivered to the successor in office of such *register-keeper*. *f. 2.*

Collectors of the land-tax to be register-keepers.

And every person possessed of a freehold estate, within the meaning of this act, shall have a right to cause his name to be enrolled in *the Register of Freeholders*, for the district within which the whole or any part of such estate shall lie, or out of which the whole or any part of such estate shall issue, upon making personal application for that purpose to the *register-keeper*; and the *register-keeper*, if qualified, may enroll his name in such register. *Id.*

Enrolment of freeholders' names.

Whereas it would be expedient that freeholders, residing at a distance from the place where their freeholds lie, or out of which the same shall issue, should be enabled to cause their names to be enrolled, without travelling to such place,

Enrolment of freeholders who live at a distance from their estates.

any such freeholder who shall reside within such county, or within any other county, may cause his name to be enrolled in the register of freeholders, by producing to any justice of the county where such freeholder shall reside or be, an attestation, (schedule N^o 3.) which shall be sworn to and subscribed by such freeholder before such justice, who is required to administer such oath *gratis*, and to sign the *jurat* at the foot thereof. And unless such justice shall be a justice for the county in which such estate shall lie, or out of which the same shall issue, an oath of the form (schedule N^o 4.) shall be written or printed at the end of such attestation, which shall be produced to some justice for the county in which such estate shall lie; and the person producing such attestation, shall take and subscribe the said last-mentioned oath, which such justice shall administer *gratis*, and sign the *jurat* at the foot thereof; and such attestation being afterwards produced to the register-keeper, the freeholder, whose estate is therein described, shall be entitled to have his name enrolled in such register, as if he had personally appeared; and such attestation shall be left with such register-keeper, who shall deliver *gratis* to the person producing such attestation, a copy of such enrollment, on the same day that the attestation was produced. *f. 3.*

Freeholders
may be inrolled
at eighteen.

Register-keep-
er's duty.

All freeholders upwards of eighteen years of age are entitled to be enrolled, by personal application, or by attestation as aforesaid. *f. 4.*

No register-keeper shall have any judicial power with respect to any question relative to the right of any person to be enrolled, but shall enrol all who shall apply as aforesaid, and shall sign the same; but shall not be compellable to make any such enrolment before *April 6, 1789*; nor on a *Sunday, Good-Friday, or Christmas-day*, or on any general fasting-day. And such freeholder is authorized to be present, and to examine whether the same be correctly enrolled, and to require the said register-keeper to sign the said enrolment in his presence, which shall be done *gratis*. *f. 5.*

Woters to make
a declaration.

After *July 10, 1790*, no person shall vote for a knight of the shire till he shall have made a declaration (according to a form in the act). *f. 7.*

Not intitled to
vote till twelve
months after in-
rolment.

Nor shall any person have a right to vote (except as hereafter excepted) who shall not have been enrolled twelve calendar months before the day on which he shall tender his vote; and shall, before he be permitted to vote, make a declaration (according to a form in the act). *Id.*

Exceptions.

Provided that any person to whom a freehold shall come by

by death, promotion to a benefice, office, or marriage, within two years before tendering his vote, shall have a right to vote without having his name enrolled for twelve months; if his name be enrolled prior to his tendering the vote, and if he shall make a declaration (the form of which is given in the act); and he shall moreover produce to the sheriff or person taking the poll, a copy of his enrolment, which shall be left with the sheriff or person taking the poll. *s. 8.*

Should any person cause himself to be enrolled who has not a legal freehold, or whose estate shall not then be of the clear yearly value of forty shillings, over and above the interest of any money secured by mortgage on such estate, and all rents and out-goings payable out of or in respect of the same, other than parliamentary, public, or parochial taxes; or if the whole or some part of the estate shall not lie in the district where the enrolment is made; or if he is not, at the time of making such enrolment, in the actual possession or receipt of the rents and profits of such estate for his own use; or if he shall be possessed of no freehold estate but what has been granted to him fraudulently, or in which his interest shall be nominal or fictitious; or shall, upon personal application to be enrolled, mis-state any of the particulars directed to be specified in his enrolment, he shall forfeit 20*l.* *s. 9.*

Penalty on enrolling without having such estate, &c.

Any person who shall vote in consequence of an estate which shall not be freehold, or without being twenty-one years of age, shall forfeit 20*l.* to the candidate for whom he shall not have voted, and who shall first sue for the same, if within three calendar months. If such candidate shall not sue for it in that time, the same shall go to any other person who shall sue. *s. 10.*

Other penalties.

If a register-keeper shall refuse to enrol the name of any person requesting the same, on proof thereof, on the oath of one witness, before one justice, he shall summon such register-keeper; and if he shall not shew sufficient cause for such refusal, or, having been duly summoned, shall neglect to obey the summons without sufficient reason, such justice shall levy, by distress and sale of his goods and chattels, the sum of 40*s.* and the costs and charges attending such distress and sale, to the person so refused to be enrolled; and if, on a fresh application to be enrolled, such register-keeper shall again refuse, he shall forfeit 10*l.* and 10*l.* upon every subsequent conviction. *s. 11.*

Penalty on register-keeper refusing to enrol.

And the clerk of the peace shall, on or before April 5, 1789, deliver to the different register-keepers within his county, printed copies of a notice (the form of which see in

Notices to be given to freeholders.

the act), one whereof shall be left by such register-keeper at the usual place of abode of every freeholder within his district, and a like notice shall be affixed on the door of every church or chapel, in the month of *April* 1789. And such register-keeper shall subscribe his name and place of abode to such notice. And such clerk of the peace shall also deliver to every register-keeper within such county, a printed charge (schedule, N^o 8), shewing in what manner he is to publish the said notice, and to execute his office. And such clerk of the peace shall likewise, in the said month of *April*, cause such notice to be publicly proclaimed in every principal street, square, and place, in every market-town in the county, on some market-day, and shall also send a copy thereof to the printer of every newspaper within the county, to be inserted therein. And every register-keeper shall sign a receipt for the said notice (of the form in schedule N^o 2.) *f. 12.*

Summons to
freeholders,

And such register-keeper shall, between the 1st *Monday* in *May* and the 1st day of *June* 1789, deliver to every freeholder within his district who shall reside therein, and who has not been enrolled, a summons (see the form in the act), and shall sign his name and place of abode to such summons, and shall be ready at his dwelling-house on the said first *Monday* in *May*, and on the second *Thursday* in *June*, between nine in the forenoon and three in the afternoon, to make enrolments. *f. 13, 14.*

Register-books
to be provided
and delivered to
the clerk of the
peace.

And the king's printer shall provide a number of books (schedule, N^o 7.) equal to the number of registers, to be so bound as to admit leaves containing copies of enrolments as aforesaid; and also a number of blank forms of enrolments, printed on single half sheets, which he shall deliver to every clerk of the peace by the 5th day of *March* 1789, who shall, by *April* 5 following, distribute half the blank-forms amongst the register-keepers, who shall sign a receipt (schedule, N^o 2.) for the same. *f. 15.*

Copies of en-
rolments to be
delivered to the
clerk of the
peace at the
quarter-sessions.

And every register-keeper, or person who shall officiate as such, shall make upon the blank forms, on single half sheets, as aforesaid, an exact copy of enrolments contained in the register in his custody, and of the progressive number of every such enrolment, and deliver such copy to the clerk of the peace at the quarter-sessions, in *July* 1789, upon oath; and afterwards, twice in every year, in *January* and *July*, also deliver to the clerk of the peace at the quarter-sessions, upon oath, a copy, gratis, of every enrolment which shall have been made in his register in the half year preceding; and shall at the same time deliver every
attesta-

attestation which shall have been left with him. And if no enrolment shall have been made since the last copy was delivered, such register-keeper shall deliver (or safely transmit, sealed up) to such clerk of the peace, a notice signed by him (schedule, N^o 5.) *f. 16.*

The clerk of the peace shall paste the copies of enrolments in a book of the form (schedule, N^o 7.); and if any enrolment or attestation be wanting, or if he shall not have received any copy of enrolment, or notice as aforesaid, he shall give notice thereof to the register-keeper, and shall repeat such notice as often as the case shall require. And he shall preserve all such books, attestations, and notices delivered to him; and shall deliver the same to his successor. *f. 17.*

Books, attestations, and notices to be preserved.

And every register-keeper shall, in *May* or *June* 1790, and so annually, carry the register and copy of enrolments of persons who shall be dead, or who shall have disposed of their freeholds, to a justice of the peace, who shall fill up the blanks in the memorandums at the end of the original enrolment of the register, and at the end of the copy, and sign the same; and such register shall, in *July* following, deliver such copy to the clerk of the peace at the sessions, who shall paste it in the proper book on the back of the leaf having the same number as the enrolment. But no clerk of the peace or register-keeper shall erase any such enrolment; but it shall continue and stand upon the register. *f. 18.*

Copy of the enrolments of those who are dead, &c.

The votes of persons intitled to *rent-charges* or *annuities* shall not be valid, unless the directions of 3 *Geo. 3. c. 24.* are complied with; and unless a memorial of the lease be entered with the clerk of the peace before the election, containing the *date*, the *parties*, the *lands*, and the *habendum*. And every clerk of the peace shall, by *April* 5, 1789, provide proper books for enrolling such memorials. *f. 19.*

Annuitants.

And the said last-mentioned act of 3 *G. 3. c. 24.* enacts, That no person shall vote in the election of a knight of the shire, or member for a city or town being a county of itself, in respect of any *annuity* or *rent-charge*, granted before *June* 1, 1763; unless a certificate upon oath be entered with the clerk of the peace or town-clerk, twelve months before the election, as follows: "I *A. B.* of
" am really and *bona fide* seized of an annuity or
" rent-charge, for my own use and benefit, of the clear
" yearly value of 40*s.* above all rents and charges payable
" out of the same, wholly issuing out of freehold lands, re-
" nements, or hereditaments belonging to *C. D.* of

Q 3

" situate

"situate, and being in the parish, township, or place, or
 "in the parishes, townships, and places of E. in the county
 "of , without any trust, agreement, matter, or
 "thing to the contrary notwithstanding; and I, or the
 "person or persons under whom I claim, was or were
 "seised of the said annuity or rent-charge by the first day
 "of June 1763." And a like certificate shall be entered
 (*mutatis mutandis*) where such rent-charge came by de-
 scent, marriage, devise, or promotion to a benefice or of-
 fice. *f. 1, 2.*

Annuity to be
 registered 12
 months to qua-
 lify a voter.

And by the same statute, *f. 2.* No person shall vote at
 such election in respect of any annuity or rent-charge grant-
 ed after June 1, 1763; unless a *memorial* of the grant of
 such annuity or rent-charge shall have been registered with
 the clerk of the peace, or town-clerk, twelve calendar
 months at least before the first day of election.

Memorial.

Such memorial shall be written on parchment, and di-
 rected to the clerk of the peace or town-clerk, and shall
 be under the hand and seal of the grantor, and attested by
 two witnesses, one whereof to be a witness to the execu-
 tion of such grant; which witness shall upon oath, before
 such clerk of the peace, prove the sealing and delivery of
 the grant, and the signing and sealing of the memorial. *Id.*

Such memorial
 to contain the
 particulars.

Such memorial shall also contain the day and year of the
 date, and the names, additions, and abodes of the parties
 and witnesses, and all the lands and tenements out of which
 the rent-charge issues, and the places where they lie. *Id.*

Town clerk to
 indorse a certi-
 ficate.

And, at the time of entering the memorial, the grant shall
 be produced to such clerk of the peace or town-clerk, who
 shall indorse thereon a certificate, wherein shall be mentioned
 the day and year on which such memorial shall be entered.
Id. f. 3.

Assignment of
 such grant.

And no person shall be qualified to vote, by reason of an
assignment of such annuity or rent-charge, without a certifi-
 cate, entry, and memorial of such grant and assignment, as
 in case of an original grant. *f. 4.*

For the entry of such certificate, the clerk of the peace
 or town-clerk shall have 1s. and of the memorial 2s. For
 search thereof 1s. and for copies at the rate of 6d. for every
 two hundred words. *f. 5.*

Sheriff to pro-
 vide a book for
 the poll,

And at every election the sheriff shall provide for each
 district a book for taking the poll (of the form in schedule
 N^o 6.) And every freeholder shall vote at the poll-book of
 the district in which he is inrolled. *f. 20.*

and receive the
 vote.

And after July 10, 1790, no sheriff shall have any judi-
 cial power to determine the right of voting of any person who
 shall

shall tender his vote, but shall receive it, such person making the requisite declaration, &c. And persons authorized to take the poll may administer such declarations. *f. 21.*

By the 25 G. 3. c. 84. *f. 1.* If the election shall not be determined on view, but a poll shall be demanded, such poll shall commence on the day on which such demand is made, or on the next day at farthest (unless it shall be on Sunday, and then on the day after); and shall be duly and regularly proceeded in from day to day (*Sundays* excepted), till it be finished; but so as not to continue more than fifteen days at the most (*Sundays* excepted); and, if it shall continue for fifteen days, then to be finally closed, before the hour of three in the afternoon of that day.

Demanding a poll.

And by the same statute, *f. 3.* Every returning officer, unless prevented by some unavoidable accident, shall cause the said poll to be kept open for seven hours at least in each day, between eight in the morning and eight at night.

Poll to be kept open seven hours a day.

And every person who shall be employed as a poll-clerk, shall, before he begins to take the poll, be sworn by such returning officer, truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll. *Id. f. 7.*

Poll-clerks to be sworn to do their duty.

And by the 7 & 8 W. c. 25. *f. 4.* Such votes shall be deemed legal, which have been so declared by the last determination in the house of commons; which last determination, concerning any county, city, borough, cinqueport, or place, shall be final to all intents and purposes.

Legal votes.

By the 28 G. 3. c. 36, The sheriff shall also declare the number of votes given for each candidate; and if within one hour afterwards ten freeholders shall demand a scrutiny,

Declaration of numbers on the poll.

he shall proceed therein on the day following, unless such day be a Sunday, Good Friday, Christmas-day, or a public fast-day; and then on the day following. And the clerk of the peace shall attend during the scrutiny, by the hour of eight in the morning, with copies of enrolments, books wherein memorials of leases have been enrolled, and all books of entries of certificates and memorials in his keeping. And if it appear to the sheriff on such scrutiny, that any person has voted without being enrolled, &c. in pursuance of this act, he shall reject such vote, and, upon the original poll-book, opposite the name of such voter, write "rejected;" but he shall not erase the entry of the vote.

Demand of a scrutiny.

f. 22.

And the register shall remain with the person acting as register-keeper in every district, and shall not on any pre-

Register to remain with the register-keeper

tence be carried to any distance from such district, except before a justice, or to the assizes in the particular cases above specified; and a copy of any enrolment proved upon oath by any person who shall have examined the same, shall be legal evidence; and also the copy kept by the clerk of the peace, when that from the register is not produced. *f. 23.*

Inspection of
register.

And the registers may be inspected by any person at seasonable times, on paying 1*s.* to the register-keeper or clerk of the peace for each inspection. *f. 24.*

Copies of enrol-
ments to be
delivered.

The register-keeper shall deliver copies of enrolments or attestations in his custody, and sign them: and the clerk of the peace shall also deliver copies of attestations, or of enrolments, or of memorials of leases in his custody, signed by him, in a reasonable time, to any person who shall demand the same, for which shall be paid 2*d.* for every freeholder's enrolment, and at the rate of 1*d.* for every thirty words in any such attestation or memorial of a lease; which copies of enrolments shall be made upon the blank form, or be in the form of the original enrolments. *f. 25.*

When any register-keeper shall happen to be out of blank forms, he shall be furnished therewith from the clerk of the peace, on application. *f. 26.*

List of districts
to be made out
by the clerk of
the peace,
assisted by the
receiver gene-
ral.

The clerk of the peace shall, previous to *October* 1788, make out a list of every district in the county for which separate collectors of the land-tax are appointed; and the receiver-general of the land-tax shall assist him in so doing, being duly required by him so to do; and the clerk of the peace shall produce such list at the quarter-sessions in *October*, and verify it on oath; and the justices shall then sign such list, which shall be kept amongst the county records. And such clerk of the peace shall, within one month, deliver a copy thereof to the sheriff; and by the 24th of the said *October*, shall require the king's printer to send him a sufficient number of registers, according to the number of districts; and afterwards from time to time such further number as occasion may require; and shall make an attested copy of the said list for any person who shall demand the same, on being paid 1*d.* for every thirty words. And if any district shall have been omitted in such original list, the sessions, upon the fact being proved on oath, may amend such list, by inserting such district, and shall order the clerk of the peace to send a register to the register-keeper of such district. *f. 27.*

The clerk of the peace may appoint a deputy, who may do all things required by this act. *f. 28.*

All

All expences incurred by the king's printer, or clerk of the peace, shall be paid out of the county rate, and the charges of such clerk of the peace shall be settled at the quarter-sessions. *s. 29.* Expences to be paid out of the county-rate.

After 10th July, 1790, the returning officer need not take the oath prescribed by 2 G. 2, commonly called the *returning officer's oath*; nor any freeholder the oath prescribed by 18 G. 2, commonly called the *freeholder's oath*. *s. 30, 31.*

Second husbands may vote in right for their wives dower, though not set out by bounds. *s. 34.* Second husbands.

Any person who shall make any false declaration, or commit wilful perjury, or be guilty of false affirmation, or procure the same to be done, shall forfeit 500*l.* and also be imprisoned for any time not less than one year, and not exceeding three years. *s. 35.* Penalty on false declaration, and perjury.

If any person shall wilfully and maliciously destroy or cause or procure to be destroyed, or shall aid or assist in destroying or altering any register of freeholders, or book of copies of enrolments, or any book of enrolments of memorials of leases, or any attestation; or shall erase or falsely alter the whole, or any part of any enrolment, or copy of enrolment in any such register, or book, or attestation; or insert or cause to be inserted in any such register or book, any counterfeit or fictitious enrolment, or copy of enrolment, or attestation aforesaid; or shall forge or counterfeit the name of any person which shall have been signed to any enrolment, or copy thereof, or attestation, or *jurat* aforesaid, he shall be deemed guilty of a misdemeanor, and may be transported for any term not exceeding seven years. *s. 36.* Destroying registers, books, book of enrolments, &c.

All forfeitures to be recovered in the courts at *Westminster*, except in cases herein otherwise provided for. *s. 37.* Penalties how recovered.

Provided, that no person shall be deemed to incur any penalty for having caused his name to be enrolled in any register of freeholders, or for voting, on account of any defect in title to the estate for which he was enrolled, or voted, if he be in the actual possession or receipt of the rents or profits of such estate to his own use, and shall not hold the same by copy of court-roll, or at will, or sufferance, or for term of years, or by virtue of any grant or lease not being for life, or for a greater estate. *s. 39.* No penalty for defect of title, if in actual possession.

But persons who are entitled to the rents of lands demised for lives, shall have a right to be enrolled, and to vote, if the rent so accruing be of the clear yeary value or 40*s.* *s. 43.* Rents of lands demised for lives.

The

Petitions complaining of undue elections, by whom to be subscribed.]

The statute of 28 G. 3. c. 52, (after reciting 10 G. 3. c. 16; 11 G. 3. c. 42; and 25 G. 3. c. 84, and that further regulations should be made for the execution of the said acts, and that provision should be made for discouraging persons from prosecuting frivolous or vexatious petitions, or setting up frivolous or vexatious defences, in any of the causes to which the said acts relate; and also for the final decision of questions respecting the rights of voting at such elections, or of nominating the returning officers who are to preside thereat) enacts, That no person, complaining of an undue election or return, shall be proceeded on in the manner prescribed in the said acts, unless the same shall be subscribed by some person claiming therein to have had a right to vote, or to be returned as duly elected at the election to which the same shall relate, or alledging himself to be a candidate at such election. *s. 1.*

Recognizance to be entered into for appearing.

And no proceedings shall be had on any petition, unless one of the subscribers to it shall enter into a recognizance to appear before the house, at the time fixed for taking it into consideration; and if no recognizance shall have been duly entered into, the order for taking the petition into consideration shall be discharged, unless the house shall see cause to enlarge the time. *s. 5.*

Speaker to approve of the sureties.

Such recognizance to be entered into before the speaker, and the sufficiency of the sureties to be allowed by him, on the report of two persons appointed by him to examine the same. *s. 6.*

Where the party or his sureties live at a distance, recognizance may be entered into before a justice.

But where the party who is to enter into such recognizance, or his sureties, shall reside upwards of forty miles from *London*, such party or surety may enter into such recognizance before a justice; which recognizance, being duly certified under the hand of such justice, and being transmitted to the speaker, shall have the same effect as if it had been entered into before the speaker. And the persons to whom it is referred to examine the sufficiency of such sureties, may receive as evidence, in their examination, any affidavits relating thereto, which shall be sworn before a master in Chancery, or any justice. *s. 7.*

By the 5 G. 3. c. 15, No person claiming as a freeman to vote at an election for any city, town, port, or borough, shall be admitted to poll, unless he has been admitted to his freedom twelve calendar months before the first day of the election; and if he shall vote contrary hereto, he shall forfeit 100*l.* and his vote shall be void.

Exceptions.

But nothing herein shall extend to the cities of *London* and *Norwich*, nor to any person entitled to his freedom by birth.

birth, marriage, or servitude, according to the custom of such city, town, port, or borough. *Id.*

And by the 26 G. 3. c. 100. s. 1, 2, No person shall vote at any election for any city or borough, as an inhabitant paying scot and lot, or inhabitant householder, housekeeper, and pot-waller, legally settled, or resident, or as an inhabitant thereof, unless he shall have been actually and *bona fide* an inhabitant within such city or borough for six calendar months previous to the day of election; and such vote shall be null and void, and any such vote shall be void, and the voter shall forfeit 20/. to be recovered in the courts at *Westminster* within six months. But the same shall not extend to any person who shall acquire the possession of any house in such city or borough, by descent, devise, marriage, or marriage-settlement, or promotion to any office or benefice. And this shall relate only to persons who claim to vote as inhabitants, in manner as aforesaid, and shall not extend to any other description of persons who may claim to vote by any other title, or by any other superadded qualification.

Inhabitants of any city or borough, as an inhabitant paying scot and lot &c. shall have been resident in such city, borough, &c. six calendar months

With respect to Bribery in the election of members of parliament, see title BRIBERY.

V. Return.

If any officer shall return any member, contrary to the last determination in the House of Commons, the same shall be adjudged a false return; and the party duly elected may recover double damages with full costs. And the like remedy shall be against an officer making a double return, 7 & 8 W. c. 7.

What shall be a false return.

By the 7 H. 4. c. 15, After the election, the names of the persons chosen shall be written in an indenture under the seals of the electors, and tacked to the writ.

Names written in an indenture.

And by the 25 G. 3. c. 84. s. 1, The returning officer shall, immediately after the final close of the poll, or on the next day after, truly, fairly, and publicly declare the name of the person who has the majority of votes, and forthwith make a return of such person; unless the returning officer, on a scrutiny being demanded by any candidate, or any two electors, shall deem it necessary to grant the same; in which case he shall proceed thereon, but so as that, in all cases of a general election, every returning officer having the return of the writ, shall cause a return of a member to be filed in the Crown Office, on or before the day on which

Returning officer to declare who has the majority of votes and to return such person, unless a scrutiny should be demanded and granted.

such

such writ is returnable; and every other returning officer, acting under a precept or mandate, shall make a return of a member in obedience to the same, six days at least before the day of the return of the writ, by virtue of which such election has been made; and so that, in case of any election upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then that a return of a member shall be made within thirty days after the close of the poll, or sooner if it can conveniently be done.

Votes to be decided alternately.

By the same statute, *f. 2*, When a scrutiny shall be granted as aforesaid, and there shall be more parties than one, the returning officer shall decide alternately on the votes given for the different candidates who shall be parties to such scrutiny, or against whom it shall be carried on.

Witnesses may be sworn.

And such returning officer may, if he shall see cause during the scrutiny, administer an oath to any person consenting to take the same, touching the right of any person having voted, or touching any other matter or thing material or necessary towards carrying on such scrutiny. *Id. f. 6*.

Persons committing wilful perjury.

And by the same statute, *f. 8*, Every person who, in taking any oath herein before appointed, shall thereby commit wilful perjury, or unlawfully and corruptly procure or suborn any other person to take any such oath, whereby he shall commit such wilful perjury, and shall be convicted thereof, shall incur such penalties as are inflicted by 5 *Eliz. c. 9.* and 26 *G. 2. c. 25.*

Exception.

But nothing herein shall extend to alter or affect the election of any member for any place where particular regulations have been made by statute. *Id. f. 9.*

Where no member is properly returned, a petition may be presented to the house of commons.

If, upon any writ issued, no return shall be made on or before the day on which such writ is returnable; or if a writ shall have been issued during any session or prorogation of parliament, and no return shall be made within fifty-two days after the day on which such writ bears date, or if the return made, in either case, shall not be a return of a member according to the requisition thereof, but contain special matter only concerning such election; any person having or claiming a right to vote, or claiming a right to be returned, who shall think himself aggrieved, may petition the house of commons concerning the same; and, upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners, and to the officer by whom such return should have been made, accompanied with an order to attend the

the house at the time appointed, by themselves, their counsel, or agents; and a select committee shall be appointed, as directed by the 10 & 11 G. 3, who shall proceed therein as by the said acts are directed: and all rules and regulations in either of the said acts contained, shall extend to this act. *f. 10, 11.*

By the 7 and 8 W. c. 25. *f. 6,* Every sheriff or returning officer shall deliver copies of the poll to any person delivering the same, paying a reasonable charge for the writing thereof. Copies of the poll.

And he shall, within twenty days after the election, deliver over upon oath (to be administered by the two next justices, 1 Q.) the poll-books to the clerk of the peace, without alteration, to be kept among the records of the sessions. 10 Ann. c. 23. *f. 5.* Poll books to be delivered to the clerk of the peace.

On petition to the house of commons, complaining of an undue election, forty-nine members of the house of commons shall be chosen by ballot, from whom each party shall strike out one, till they are reduced to the number of thirteen; who, together with two more, (one to be nominated by each party) shall be a select committee for determining such controverted election. 10 G. 3. c. 16. 11 G. 3. c. 42. Select committee to determine controverted elections.

VI. Privilege of Parliament.

A member of parliament, by the common law, shall have the privilege of parliament; not only for himself and his servants, to be freed from arrest, subpœna, citation, and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 Infl. 24, 25. Privilege of a member and his servants.

T. 31 G. 2. *K. v. Earl Ferrers.* A writ of *habeas corpus* having been granted, and served on the said earl, returnable *immediate*, to bring up the body of his countess, who was sister to Sir *William Meredith*, (that she might have an opportunity to lay her case before the court, and swear the peace if she should think proper, thereby to receive the protection of the court against the earl); and the earl having neglected to return the said writ, Mr. Norton and the other counsel for Sir *William Meredith*, on behalf of his sister, intended to have moved for an attachment against the earl for this his disobedience. But some doubts and difficulties having been started by members of both houses, concerning the privilege of peerage, and whether

the court of King's Bench could issue an attachment against a peer during the sitting of parliament, and execute it upon him, only for a contempt to their court; Sir *William* judged it prudent to petition the house of lords, for their leave to proceed against the earl, and accordingly (by the hands of the earl of *Westmorland*) delivered a petition, stating the facts. Lord *Delaware* opposed it; and said, it was too summary and hasty a method of determining on their privileges; and proposed referring the matter to a committee, and summoning Lord *Ferrers* to answer it in his place: and to obviate the objections which might be made to this method, on account of the delay, he offered some methods to be taken for the immediate safety of the countess. But lord *Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice, and inconvenience of allowing such a privilege, in criminal cases and breaches of the peace. The duke of *Argyle* spoke to the like effect, and expressed a surprize that there should be any doubt about it; the reason of the thing being so clear and plain. The earl of *Hardwicke* spoke in support of the same doctrine, and adduced many instances and precedents in proof of his positions; and concluded with proposing, that to put an end to all doubt about it for the future, the lords should come to a resolution; and accordingly they came to the following resolution or declaration, and ordered it to be entered on their journal, viz. "7 February, 1757, It is ordered and declared, that no peer or lord of parliament hath privilege against being compelled by process of the courts of *Westminster-hall*, to pay obedience to a writ of *habeas corpus* directed to him." *Burr. Mansf.* 631.

Members of parliament, &c. may be sued by action, but not arrested during the time of privilege.

By the 12 & 13 *W. c.* 3. and 11 *G. 2. c.* 24, it is enacted, That any person may bring an action against a peer or member of parliament, or any of their menial or other servants, immediately after the dissolution or prorogation, till a new parliament meet, or the same be reassembled; and from any adjournment of both houses for above fourteen days, till both houses shall reassemble; and the courts, during such time, may proceed to give judgment and award execution. But this shall not extend to subject the person to be arrested during the time of privilege; but the plaintiff may prosecute at law by summons and distress infinite, or by original bill, and summons, attachment, and distress infinite, till the defendant shall enter a common appearance, or file common bail: and in equity, the plaintiff may proceed by letter or subpoena; and after service thereof may,

may, for want of appearance or answer, or non-performance of an order or decree, or for breach thereof, sequester the real and personal estate of the party, but not arrest his body.

And any member who shall be arrested, during the time of privilege, may be discharged on *motion*, without bringing his writ of *privilege*, as in the following case: 7 G. 2. *Holiday and Pitt*, and other Plaintiffs in several suits against the same Defendant. A motion was made in the court of King's Bench to discharge the defendant *John Pitt, esq.* out of custody, because he, having been member for *Camelford* in *Cornwall* in the late parliament, was arrested by several writs out of the C. B. and *latitats* out of this court, within *three days* after the prorogation, and *two days* after the dissolution of parliament, before the time of *privilege*, as he alledged, was out. He was likewise charged in custody with several declarations. The defendant removed himself into this court by *habeas corpus*. (The return was produced in court to shew that he was a member, and an affidavit made that he continued sitting till the end of the parliament.) The judges of this court having conferred with the rest of the judges, it was ordered to be further argued. Lord *Hardwicke*, on the 27th of *May*, delivered in the unanimous opinion of the eleven judges, who were present at the arguments; which was, that the defendant was entitled to the privilege of parliament *to his return*; that it was not necessary in this case to determine to what time it was limited, or supposing it to be only for a convenient time, the defendant was arrested within that convenient time, he having been taken within *three days* after the prorogation, and *two days* after the dissolution of the parliament, and that consequently his person ought to be discharged in a proper and legal manner; but that the remaining question is, What is that proper and legal method, whether by writ of privilege, under the great seal on record, or whether it may be done by motion on affidavit? As to this point, the judges were all of opinion, that a writ of privilege is a proper method to be taken for the discharge of the defendant's person; but there was a great doubt, and some variety of opinions among them, whether the court would discharge him in the method now taken on motion or not, no case having been produced from the books, wherein any person entitled to the privilege of parliament was discharged after this manner. But it being a matter of consequence, and the short time between the arguments and the last day of the term, being taken up in neces-

necessary business, the court was of opinion to enlarge the rule till next term, without prejudice to the defendant's bringing his writ of privilege; and if the defendant does not think fit to bring his writ of privilege in the mean time, but insists on the method already taken, they will then give their opinion on the matter, after having given it the consideration it will require, it being altogether a new proceeding. The judges afterwards gave their opinion for the defendant's being discharged on motion. *Cas. imp. Lord Hardwicke, 29.*

Bankrupts:

But with respect to bankrupts, it is enacted by the 4 G. 3. c. 33, That the petitioners, on affidavit of the debt, and that they verily believe that the debtor is a trader within the statutes of bankruptcy, may sue out a summons, or an original bill and summons, and serve him with a copy thereof; and if he shall not, within two months after service, pay the debt, or enter into bond to pay such sum as shall be recovered, with costs, he shall be adjudged a bankrupt from the time of service of the summons, and the creditors may proceed against him as against other bankrupts. Provided that this shall not extend to subject any person entitled to privilege to be arrested, during the time of such privilege, except in cases made felony by any of the statutes of bankruptcy.

Methods to be pursued in prosecuting actions against peers, or members of the House of Commons, by 10 G. 3.

And the 10 G. 3. c. 50, enacts, That any person may commence and prosecute any action in any court of record or court of equity, or of admiralty (or, in causes matrimonial and testamentary), against any peer or member of the House of Commons, or any of their menial or other servants, or any other person entitled to privilege of parliament; and no proceedings thereupon shall be delayed under colour of such privilege. Provided, that this shall not subject the person of any member of the House of Commons to be arrested or imprisoned on any such suit or proceedings. And to remedy the dilatoriness by process of *distringas*, the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, and the surplus to be detained till the defendant shall have appeared, or other purpose of the writ be answered. And obedience may be enforced to any rule of the court of King's Bench, Common Pleas, or Exchequer, against any person entitled to privilege, by distress infinite, if the person entitled to the benefit of such rule shall chuse to proceed in that way.

Duration of Parliament.

By the 1 G. 2. c. 38, Parliament shall have continu-^{To continue}
ance for seven years, to be reckoned from the day on ^{seven years.}
which by the writ of summons they shall be appointed to
meet; unless sooner dissolved by the king.

And they shall not be dissolved by the death of the king, ^{Not dissolved by}
but shall continue and immediately meet, sit, and act for six ^{the king's}
months, unless sooner dissolved by the successor. And if ^{death.}
there shall then be no parliament, the last preceding parlia-
ment shall meet, sit, and act as aforesaid. 7 & 8 W. c. 15.
6 Ann. c. 7.

Partridges. See CABBAGES.

Partition.

PARTITION is a dividing of land descended by the
common law, or by custom, among coheirs or par-
ceners, where there are two at the least.

The 7 & 8 W. 2. 31, enacts, That if the high sheriff
cannot conveniently be present at the execution of any
judgment in partition, then the under-sheriff may, in the
presence of two justices, proceed to execution of the writ of
partition.

Partridge. See GAME.

Pawning.

THE 25 G. 3. c. 48, enacts, That every person who ^{Pawnbroker to}
shall exercise the trade of a pawnbroker, shall take out ^{take out a li-}
a licence, for which he shall pay, if within the bills of mor- ^{cence.}
tality 10/. elsewhere 5/; and such licence shall be annually
renewed, ten days at least before the end of the year, on
pain of forfeiting 50/. to be recovered in the courts at *West-*
minster. s. 1, 3, 4, 12.

And the same shall be under the management of the com-
missioners of the stamp-duties. s. 2.

Who are pawnbrokers.

And all persons receiving by way of pawn, pledge, or exchange any goods for the repayment of money lent thereon, shall be deemed pawnbrokers. *s. 5.*

Not to extend to persons taking common legal interest.

But by the 29 G. 3. *c. 57. s. 23*, The same shall not extend to any person lending money at 5*l. per cent.* interest, without taking any further or greater profit for the loan thereof.

No person shall keep more than one house or shop, by virtue of one licence; but persons in partnership are not required to take out more than one licence for one house. *s. 7. 8.*

Expired acts.

The statute of the 27 G. 3. *c. 37*, which constituted the principal part of the law under this title, was a temporary act, to continue in force only till the 1st of June 1788; it was afterwards continued, by the 28 G. 3. from that period to the end of the then next session of parliament; when it of course expired.

Pawnbroker's name and business to be put over the door.

But by the 29 G. 3. *c. 57*, entitled an act for farther regulating the trade and business of pawnbrokers, it is enacted, That every person who shall carry on the trade and business of a pawnbroker, shall cause his christian and surname to be painted or written, in large legible characters, over the door of each shop or other place by him used for carrying on such business, and the word *pawnbroker* following the same, on pain of forfeiting 10*l.* for every shop or place made use of for one week, without having the same put up: to be recovered by confession, on oath of one witness, by distress, by warrant under the hands and seals of two justices; and the said penalty, after deducting the charges for recovering the same, shall be half to the informer, and half to the poor of the parish or place where the offence shall be committed; and for want of sufficient distress, such justices shall commit the offender to gaol, or the house of correction, for any time not exceeding three months, nor less than fourteen days, unless such penalty and reasonable charges shall be sooner paid. *s. 17.*

Pawnbrokers allowed to take the following rate for profit.

And it shall be lawful for every pawnbroker, to demand, receive, and take the following rates, over and above the principal sum which shall have been lent and advanced upon the respective pledges, before he shall be obliged to re-deliver the same, viz.

For every pledge upon which there shall have been lent any sum not exceeding 2*s. 6d.* one halfpenny, for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every month afterwards, including the current month in which such

such pledge shall be redeemed, though such month shall not be expired :

If 5s. shall have been lent thereon, 1d.

— 7s. 6d. ditto - 1½d.

— 10s. ditto - 2d.

— 12s. 6d. ditto - 2½d.

— 15s. ditto - 3d.

— 17s. 6d. ditto - 3½d.

— 1l. 0s. ditto - 4d.

And for every pledge upon which there shall have been lent any sum exceeding 40s. and not exceeding 10l. after the rate of 3d. and no more, for the loan of every 20s. so lent, by the calendar month, including the current month, and so in proportion for any fractional sum. Which said several sums shall be taken in lieu of, and as a full satisfaction for, all interest due, and charges for warehouse room.

§. 1.

And where any intermediate sum lent upon any pawn shall exceed 2s. 6d. and not exceed 40s. the person lending the same may take a profit as aforesaid of 4d. and no more, for the loan of 20s. by the month, including the current month as aforesaid. *Id.* §. 2.

Provided always, that the party intitled to, and applying for redemption of goods pawned within seven days after the expiration of the first month after the same shall have been pledged, may redeem the same without paying any thing by way of profit to the broker for the said seven days, or such part thereof as shall then have elapsed; and after the expiration of the said first seven days, and before the expiration of the first fourteen days of the second month, he may redeem such goods upon paying the profit payable for one month and a half; but if after the expiration of the fourteen days, and before the end of the said second month, the broker may demand and take a profit of the whole second month, and that the like regulation and restriction shall take place in every subsequent month, wherein application shall be made for redeeming goods pawned. *Id.* §. 4.

And every person who shall take by way of pawn, pledge, or exchange, of any person, any goods whereon shall be lent any money exceeding 5s. shall, before he shall advance any money upon such pawn or pledge, enter in a fair and regular manner, in a book to be kept by him for that purpose, a description of such goods, and the sum lent thereon, with the day of the month and year, and the name and place of abode of the person by whom such goods are so pawned, and

Pawnbrokers to
give a note de-
scribing things
pawned.

the name and place of abode of the owner thereof, accord-
ing to the information of the person pawning the same ;
and where the money lent on any such goods shall not ex-
ceed 5s. such entry shall be made in such book within four
hours after the said goods shall have been pawned, pledged,
or exchanged, as aforesaid ; and at the time of the taking of
every pawn, a note or memorandum, written or printed,
shall be given to the person pawning the same, containing a
description of such goods received in pawn, and also the
money advanced thereon, with the day and year and names
of the parties as aforesaid ; and upon which said note or
memorandum, or on the back part whereof, shall be writ-
ten or printed the name and place of abode of the pawn-
broker ; which note or memorandum the party pawning the
goods is hereby required to take in all cases, and the pawn-
broker shall not receive and retain such pledge, unless the
party pledging the same shall accept and take such note or
memorandum ; and every such note, where the sum lent
shall be less than 5s. shall be delivered gratis :

If the sum lent is 5s. and under 10s. such broker may take $\frac{1}{2}d.$

Ditto	10s.	ditto	20s.	ditto	1d.
-------	------	-------	------	-------	-----

Ditto	20s.	ditto	5l.	ditto	2d.
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Ditto	5l. and upwards	ditto		ditto	4d.
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Which note shall be produced to the pawnbroker before he
shall be obliged to redeliver such goods or chattels, except
as hereinafter is excepted. *f. 4.*

Penalty on un-
lawfully pawn-
ing goods the
property of
others.

If any person shall knowingly and designedly pawn,
pledge, or exchange, or unlawfully dispose of the goods of
any other person, not being employed or authorised by the
owner thereof so to do, and shall be thereof convicted by
the oath of one witness, or confession, before one justice,
every such offender shall, for every such offence, forfeit 20s.
and also the full value of the goods so pawned, such value to
be ascertained by such justice ; and if not forthwith paid,
the justice shall commit him to the house of correction, or
some other public prison of the place wherein he shall reside
or be convicted, there to remain and be kept to hard labour
for not more than three calendar months, nor less than one,
unless the said forfeitures shall be sooner paid ; and if, with-
in three days before the expiration of the said term of com-
mitment, the said forfeitures shall not be paid, the said jus-
tice, upon the application of the prosecutor, shall order him
to be publicly whipped in the house of correction, or prison
to which he shall have been committed, or in some other
public place of the county, riding, division, city, liberty,
town,

town, or place, where the offence shall have been committed, as to such justice shall seem proper. The said forfeitures, when recovered, shall be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by such justice; but if the party injured shall decline to accept of such satisfaction and costs, or if there shall be any overplus of the said respective forfeitures, then such forfeitures, or the overplus thereof (as the case shall happen), shall be paid to the overseers for the use of the poor of such parish or place. *f. 5.*

And if any person shall counterfeit, forge, or alter, or procure to be counterfeited, forged, or altered, any such note or memorandum as aforesaid, or shall utter, vend, or sell any such note, knowing the same to be counterfeited, forged, or altered, with intent to defraud any person, every such person shall be punished in manner hereinafter mentioned; and it shall be lawful for any person, his servant, or agent, to whom any such note shall be uttered or offered, which he shall have reason to suspect to have been counterfeited, forged, or altered, to seize and detain such person offering the same, and to deliver him into the custody of a constable, who shall convey him before some justice of the place wherein the offence shall be supposed to have been committed; and if upon examination it shall appear, to the satisfaction of such justice, that the person charged with having committed any such offence is guilty thereof, then the said justice shall commit him to the common gaol or house of correction, of the county or place wherein the offence shall be committed, for any time not exceeding three months, nor less than one month, at the discretion of such justice. *f. 6.*

If any person who shall offer, by way of pawn, pledge, exchange, or sale, any goods, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed of such goods, or shall give any false information, as to whether such goods are his own property or not, or if there shall be any other reason to suspect that such goods are stolen, or otherwise illegally or clandestinely obtained, or if any person not intitled, nor having any colour of title by law to redeem such goods, shall attempt or endeavour to redeem the same, it shall be lawful for any person, his servant, or agent, to whom such goods shall be so offered, or with whom such goods are in pledge, to seize and detain such person, and the said goods, and to deliver

Penalty on persons forging or counterfeiting notes or memorandums.

For punishing persons not giving a good account of themselves, on offering to pawn goods.

him immediately into the custody of a constable, who shall as soon as may be, convey such person, and the said goods, before a justice; and if such justice shall, upon examination and enquiry, have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem the same shall not have any pretence or colour of right to redeem the same, he shall commit such person into safe custody for such reasonable time as shall be necessary for the obtaining proper information on the subject, in order to be further examined; and if upon either of the said examinations it shall appear, to the satisfaction of such justice, that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem them hath not any pretence or colour of right so to do, he shall commit such offender to the common gaol or house of correction, of the county or place wherein the offence shall be committed, to be dealt with according to law, where the nature of the offence shall authorise such commitment by any other law; and where the nature of the offence shall not authorise such commitment by any other law, then such commitment shall be for any time not exceeding three months, nor less than one month, at the discretion of such justice. / 7.

Where goods are unlawfully pawned, the pawnbroker to restore them.

And if the owner of any goods unlawfully pawned, pledged, or exchanged, shall make out, either on his oath, or by the oath of one witness, or being one of the people called Quakers, by solemn affirmation, before one justice, that such owner hath had his goods unlawfully obtained, or taken from him, and that there is just cause to suspect that any person within the jurisdiction of such justice hath knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods of such owner, and without the privity or authority of such owner, and shall make appear, to the satisfaction of such justice, probable grounds for such the suspicion of the owner, then such justice may issue his warrant for searching, in the day time, the house, warehouse, or other place, of any such person charged as aforesaid; and if the occupier of any such house, warehouse, or other place wherein any such goods shall, on oath, be charged or suspected to be, shall on request to him made to open the same, by any peace officer authorised to search there, by warrant of such justice, refuse to open and permit the same to be searched, it shall be lawful for any such peace-officer to break open any such house, warehouse, or other place in the day time, and to search as he shall think fit therein, for the goods suspected to be there, doing no wilful damage; and no pawnbroker

pawnbroker, or other person, shall oppose or hinder any such search; and if upon the search of the house, warehouse, or other place, of any such suspected person aforesaid, any of the goods which shall have been so knowingly and unlawfully pawned, pledged, or exchanged, shall be found, and the property of the owner, from whom the same shall have been unlawfully obtained, shall be made out to the satisfaction of any such justice, by the oath of one witness, or confession, any such justice shall thereupon cause the goods and chattels found on any such search, and unlawfully pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner. / 8.

And whereas goods are often pawned or pledged for securing the payment of money lent thereon, and the profit thereof, and afterwards the borrowers, or their representatives, are desirous to repay the same, and make tender thereof to the person with whom the goods are so pawned, yet they are frequently under great difficulties to get back the goods so pawned, and are often under a necessity to commence suits at law for the recovery thereof, to their great expence: it is therefore enacted, That if any goods shall be pawned for securing any money lent thereon, not exceeding in the whole the principal sum of ten pounds, and the profit thereof, and if within one year after the pawning thereof (proof having been made on oath by one witness, and by producing the note or memorandum directed to be given by this act, before any justice, of the pawning of any such goods within the said space of one year) any such pawner, who was the real owner, of such goods at the time of the pawning, shall tender to the person who lent, on the security of the goods, the principal money borrowed thereon, and profit according to the table of rates by this act established, and if the person who took such goods in pawn shall neglect or refuse to deliver back the goods so pawned for any sum not exceeding the principal sum of ten pounds, to the person who borrowed the money thereon, then, and in any such case, on oath thereof made by the pawner, or some other credible person, any justice of the place where the person who took such pawn shall dwell, on the application of the borrower, his, her, or their executors, administrators, or assigns, is and are hereby required to cause such person to come before him, and shall examine on oath the parties themselves, and such other credible persons as shall appear before him, touching the premises; and if tender of the principal money due, and all profit thereof as aforesaid, shall be proved by oath to have been made (such principal money

Punishment of the pawnbroker refusing to deliver up goods to the pawner.

not exceeding the said sum of ten pounds) to the lender thereof, by the borrower, within the space of one year after the said pawning of the goods, then, on payment by the borrower of such principal money, and the profit due thereon, as aforesaid, to the lender, and in case the lender shall refuse to accept thereof, on tender thereof to him, before any such justice, such justice shall thereupon, by order under his hand, direct the goods so pawned forthwith to be delivered up to the pawner; and if the person who shall have lent any principal sum of money, not exceeding ten pounds, on any goods pawned, shall neglect or refuse to deliver up or make satisfaction for the goods which shall be so proved, to the satisfaction of such justice, to have been so pawned, as any such justice shall order and direct, then any such justice shall commit the party so refusing to the house of correction, or some other public prison, until he shall deliver up the goods so pawned, according to the order of such justice, or make such satisfaction for the value thereof, to the party or parties entitled to the redemption of such goods.

f. 9.

Persons producing notes or memorandums to be deemed the owners.

And to prevent any inconvenience to persons carrying on the business of a pawn-broker, from several different persons claiming a property in the same goods, it is enacted, That any person who shall at any time produce any such note or memorandum as aforesaid, to the person with whom the goods therein specified were pawned, as the owner thereof, or as authorised by the owner thereof to redeem the same, and require a delivery of the goods mentioned therein to him, such person shall be deemed the real owner of such goods and chattels; and such pawnbroker, after receiving satisfaction for principal and profit, shall deliver such goods to the person who shall produce such note or memorandum, and he shall be indemnified for so doing, unless he shall have had previous notice from the real owner not to deliver such goods, or unless notice shall have been given to him, that the goods are suspected to have been fraudulently or feloniously taken or obtained; and unless the real owner shall proceed in manner hereinafter directed for the redeeming of goods, where such note has been lost, mislaid, destroyed, or fraudulently obtained from the owner. f. 10.

Where notes or memorandums are lost, the pawnbrokers to deliver a copy.

And if any pawnbroker shall have had such previous notice as aforesaid, or in case any such note or memorandum shall be lost, mislaid, destroyed, or fraudulently obtained from the owner, and the goods mentioned therein shall remain unredeemed, then the pawnbroker with whom the said goods were so pledged, shall, at the request and application of any person

person who shall represent himself as the owner thereof, deliver to such person a copy of the note or memorandum so lost, mislaid, destroyed, or fraudulently obtained, with the form of an affidavit of the particular circumstances attending the case, printed or written thereon, as the same shall be stated to him by the party applying; for which copy and form of affidavit, in case the money lent shall not exceed 10s. the pawnbroker shall receive one penny; and if the money lent shall exceed 10s. the pawnbroker shall receive the like sum as he is intitled to receive on giving the original note or memorandum, to be paid by the party applying; and the person having so obtained such copy and form of an affidavit, shall thereupon prove his property in such goods to the satisfaction of some justice; and shall also verify on oath the truth of the particular circumstances attending the case mentioned in such affidavit; the caption of such oath to be authenticated by the hand writing of such justice; whereupon the pawnbroker shall suffer the person proving such property, and making such affidavit, on leaving such copy of the said note or memorandum, and the said affidavit, with the said pawnbroker, to redeem such goods or chattles. /s. 11.

And all goods which shall be pawned shall be deemed forfeited, and may be sold at the expiration of one whole year from the time of pawning the same; and all goods so forfeited, on which above 10s. and not exceeding 10/. shall have been lent, shall be sold by public auction, but not otherwise, by the order of the person having the same in pawn, after the expiration of the said year; but the person employed to sell such goods by auction shall cause the same to be exposed to public view, and catalogues thereof to be published, and an advertisement, giving notice of such sale, and containing the name of the pawnbroker with whom the said goods were in pledge, to be inserted on two several days in some public newspaper, two days at least before the first day of sale, upon pain of forfeiting to the owner the sum of 5s. /s. 12.

Provided always, that if any person entitled to redeem goods in pledge shall, before the expiration of the said year, give notice in writing to the person having the same in pledge, or leave such notice at his usual place of abode, not to sell the same at the end of the said year, then such goods shall not be sold by the person having the same in pledge till after the expiration of three months, to be computed from the expiration of the said year; during which three months the owner shall have liberty to redeem the said goods

Pawned goods deemed forfeited at the end of a year.

On notice from persons having goods in pledge not to sell, three months further allowed beyond the year, for redemption.

goods upon the terms stipulated and provided by this act. *s.* 13.

Account of sale
to be entered by
the pawn-
brokers in a
book;

and overplus
paid to the
owner of the
goods pawned
or sold.

And every pawnbroker shall, from time to time, enter in a book to be kept by him for that purpose, a just account of the sale of such goods, expressing the day when, and the money for which such goods pawned were sold, together with the name and place of abode of the auctioneer by whom they were sold, according to the information thereof from the auctioneer; and if any such goods shall be sold for more than the principal money and profit due thereon at the time of such sale, the overplus shall be paid on demand, to the person by whom, or on whose account such goods were pawned, in case such demand shall be made within *three years* after such sale, the necessary costs and charges of such, sale being first deducted; and such person who pawned such goods shall, for his satisfaction in this matter, be permitted to inspect the entry made of such sale, paying for such inspection one penny and no more; and if any person shall refuse to permit any person who pawned such goods to inspect such entry as aforesaid in any such book, or if he be an executor, administrator, or assignee, at such time producing his letters testamentary, letters of administration, or assignment, or if the goods were sold for more than the sum entered in such book, or if such person shall not have made such entry, or shall not have, *bona fide*, sold the same according to the directions of this act, or shall refuse to pay such overplus on demand as aforesaid, to the pawner, he shall forfeit treble the sum such goods were originally pawned for, to the person by whom or on whose account they were pawned; to be levied by distress by two justices where the offence shall be committed. *s.* 14.

Pawnbroker
not to purchase
goods whilst
they remain
pledged.

And no person having any goods in pledge shall, either by himself or any other person, purchase any such goods during the time they shall remain in his custody, as such pledge, (except at such public auction as aforesaid) nor shall suffer the same to be redeemed with a view or intention to purchase the same; nor shall make, or cause to be made, any contract or agreement with any person offering to pledge the same, or with the owner of the pledge, for the purchase, sale, or disposition of the said goods, before the expiration of one whole year from the time of pawning the same; nor shall any pawnbroker purchase, receive, or take any goods in pledge from any person who shall appear to be under the age of twelve years, or to be intoxicated with liquor; or purchase, or take in pawn, or exchange, the note or memorandum aforesaid of any other pawnbroker; nor buy any goods

goods in the course of his business, before eight o'clock in the forenoon, or after seven in the evening, throughout the year; nor receive or take in goods by way of pawn, or in exchange, before eight in the forenoon, or after nine in the evening between *Michaelmas-day* and *Lady-day*; or before seven in the forenoon, or after ten in the evening, during the remainder of the year, excepting only on the evenings of *Saturday* throughout the whole year, and on the evenings preceding *Good-Friday* and *Christmas-day*; nor shall any person or persons exercise or carry on the trade or business of a pawnbroker on any *Sunday*, *Good-Friday*, or *Christmas-day*. s. 15.

Time for taking in pawns limited.

And every pawnbroker shall cause to be painted or printed in large legible characters the rate of profit allowed by this act to be taken by him, and also the various prices of the notes or memorandums to be given according to the rates aforesaid, and an account of such as are to be delivered gratis, and of the expence of obtaining a second note or memorandum, where the former one has been lost, mislaid, destroyed, or fraudulently obtained; and place the same in a conspicuous part of the shop or other place wherein he shall carry on such business, so as to be visible to, and legible by, the persons pledging goods standing in the several boxes or places provided for such persons coming to pawn or redeem goods and chattles at such shop. s. 16.

Pawnbrokers to place in view the table of rates or profits, &c.

And if it shall appear, or be proved to the satisfaction of the justice, upon oath, that any of the goods pawned as aforesaid have been sold before the time allowed by this act, or otherwise than according to the directions of this act, or have been embezzled, or are become of less value than they were when pawned, through the default, neglect, or wilful misbehaviour of the person to whom they were pawned, such justice shall award a reasonable satisfaction to the owner in respect thereof, or of such damage; and the sum so awarded, in case the same shall not amount to the principal and profit due to such pawnbroker, shall be deducted out of the said principal and profit; and in all cases where the goods pawned shall have been damaged, it shall be sufficient for the pawner to pay or tender the balance; and, upon so doing, the justice shall proceed as if the pawner had paid or tendered the whole money due for the principal and profit aforesaid; and if the satisfaction to be allowed and awarded, shall be equal to, or exceed the principal and profit aforesaid, then the person to whom the same were so pledged or pawned, shall deliver the goods so pledged to the owner without being paid any thing for principal or profit; and shall

Penalty on pawnbrokers selling goods before the limited time, or injuring them.

shall also pay such excess, if any, to the person entitled thereto, on penalty of 10/; to be recovered and applied in manner herein-after mentioned. *s. 18.*

Pawnbrokers to produce their books when necessary.

And upon every occasion where any justice shall think the production of any book, note, voucher, or other paper necessary, which shall or ought to be in the hands, custody, or power of any pawnbroker, it shall be lawful for him to summon such pawnbroker before him, to attend, with all and every or any book, note, voucher, or paper, which he may or ought to have in his or her custody or power, relating to the same, which he or she is hereby required to produce before such justice, in the state the same was or were made at the time the pawn was received, without any alteration, erasure, or obliteration whatsoever; and if he shall neglect or refuse to attend, or to produce the same in its true and perfect state, he shall, unless he shew good cause, to the satisfaction of such justice, forfeit 10/ for the use, and to be levied in the manner hereinafter mentioned. *s. 19.*

Penalty on pawnbrokers offending against this act how recovered and applied.

If any pawnbroker shall, in anywise offend against this act, he shall, for every such offence, in neglecting to make, in a fair and regular manner, in such book as aforesaid, any such entry as is required to be made by him, forfeit 10/; and for every other offence against this act, where no forfeiture or penalty is imposed, he shall forfeit 5/; and all forfeitures incurred by any offence against this act, shall be levied by distress by one justice where the offence shall be committed; who may award to the party complaining, out of the said penalty, 2/ 10s. and the remainder, (not otherwise disposed of and applied by this act) to be paid and applied to the use of the poor. *s. 20.*

Limiting the time of prosecution or information.

Provided, That no person shall be liable to any prosecution before any justice by virtue of this act, for any offence or offences against this act, unless information shall be given within twelve calendar months next after the offence committed. *s. 21.*

Churchwardens, &c. to prosecute, &c.

And the churchwardens and overseers of any parish or place where any offence shall be supposed to have been committed, or some or one of them, at the discretion or direction of any justice, on having notice from him for that purpose, shall prosecute every offender for every offence so to be suggested by such justice to have been committed against this act, at the expence of the respective parish or place. *s. 22.*

Justices not to have any fees for acting under this act.

And no fee or gratuity shall be had, taken, or received, by any justice, or his clerk, or by any person whomsoever for any summons or warrant, or other proceedings whatsoever,

And all and every the provifoes, regulations, and claufes

The act to extend to executors, &c. of pawnbrokers.

General issue.

Inhabitants of any place where offences committed deemed competent witnesses.

"*To wit.*—Be it remembered, That on this day

Form of conviction.

of his majesty's

For,

riding or division of the said county

ors, for the city, liberty, or town of

"as the case shall happen to be] for and the said

do adjudge him [or her] to pay and forfeit for

given under

day and year aforelaid.

On June 19, 1944, the
 Navy and Air Force
 officers of the
 United States Navy and Air Force
 were present at the
 ceremony.

person so convicted shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, drawn up in the form aforesaid, proceed to the hearing and determination of the matter of the said appeal. /s. 28.

And no *certiorari* shall be granted to remove any conviction or other proceeding had thereon, in pursuance of this act. *Id.*

Appeal.

If any person convicted of any offence, punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next general sessions; and the execution of the judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum he shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of, and to pay such costs as the said justices in such sessions shall award on such occasion; and the sessions shall award such costs as to them shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, such appellant shall immediately pay the sum he shall have been adjudged to forfeit, together with such costs as the court shall award, or in default thereof shall suffer the pains and penalties by this act inflicted upon persons respectively who shall neglect to pay, or shall not pay the respective forfeitures by this act to be paid by persons respectively who shall be convicted by virtue of this act. /s. 29.

Public act.

This act shall be a public act, and be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without the same being specially pleaded.

Continuance of this act.

And this act shall be in force for one whole year, and from thence to the end of the then next sessions of parliament, and no longer. /s. 31.

Receiving linen, &c. put out to wash or mend.

By the 30 G. 2. c. 24. /s. 6, If any person shall knowingly buy, or take in as a pledge, any linen or apparel entrusted to any other person to wash, scour, iron, mend, or make up, and shall be convicted thereof on the oath of one witness, or confession, before one justice, he shall forfeit double the sum given or lent on the same, to the poor, to be recovered as other forfeitures by this act; and shall be obliged to restore the said goods to the owner in the presence of the justice.

One justice may hear and determine offences against this act.

And by the same statute /s. 16, any justice, to whom complaint upon oath shall be made of any offence committed against

against this act, shall issue his warrant for bringing before him, or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath, to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor, or of the person accused, and who will not voluntarily appear, he shall issue his summons to convene him to give his evidence; and, if he shall neglect or refuse to appear, on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served on him) he shall issue his warrant to bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the public prison for any time not exceeding three months; and, if on such examination the justice shall deem the evidence of any such witness to be material, he may bind over such witness, (unless a feme-covert, or under the age of twenty-one years) by recognizance, in a reasonable penalty, to appear and give evidence at the next sessions or assizes.

And no person who shall be charged on oath with being guilty of any of the offences punishable by this act, and which shall require bail, shall be admitted to bail before twenty-four hours notice at least shall be proved by oath to have been given in writing to the prosecutor, of the names and places of abode of the persons proposed to be bail for any such offender, unless the bail offered shall be well known to the justice, and he shall approve of them. And every such offender who shall be bound over to the sessions or assizes, shall be tried at the next sessions or assizes to be held after his being apprehended, unless the court shall think fit to put off the trial, on just cause made out to them. *Id.*

Offenders how
bailable.

And justices who act under 30 G. 2. c. 24, shall be indemnified as by the 24 G. 2. c. 44. And no suit shall be commenced against any peace-officer for any thing done in the execution of this act, till notice in writing shall have been given to him, or left at his usual place of abode by the attorney employed against him, containing the name and place of abode of the person who is to bring the action, together with the cause of action; and the name and place of abode of the attorney shall be underwritten or indorsed thereon; and such peace-officer may, at any time within fourteen days after such notice, tender, or cause to be tendered any sum as amends for the injury complained of, to the

Justices indem-
nified.

the party complaining, or to the said attorney; and if it is not accepted of, the defendant may plead such tender in bar of such action, together with the general issue, or any other plea, with leave of the court; and if the jury shall find the amends to have been sufficient, or otherwise the plaintiff shall fail in the action, he shall have his costs; and if the plaintiff shall prevail he shall have such damages as the jury shall think proper, together with full costs. *Same statute, s. 23.*

Peace. See SURETY.

Peas, stealing of. See CABBAGES.

Pedlars. See HAWKERS.

Peers.

Why so called.

PEERS of the realm, are the nobility of the kingdom, and lords of parliament, who are divided into dukes, marquises, earls, viscounts, and barons; and they are called *Peers*, because, notwithstanding the distinction of their dignities, they are equal, as in their votes of parliament, and in passing upon the trial of any nobleman.

Not conservators of the peace.

Dukes, earls, and barons, are not conservators of the peace at common law; and have no more power as such than mere private persons. *2 Haw. 32.*

Peers, how to be tried.

A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or misprision thereof; but in case of premunire, riot, or the like, and generally for all other crimes out of parliament (unless otherwise specially provided for by statute, as it is in many instances) though it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. *3 Inst. 30. 2 Haw. 324.*

Outlawry lies against a peer.

Process of outlawry lies against a peer, if he be indicted and does not appear, and cannot be taken; otherwise he might take advantage of his own contumacy. *3 Inst. 31.*

Surety of a peer

The safest way of proceeding against a peer for sureties of the peace or good behaviour, is by complaint to the court of Chancery or King's Bench. *1 Haw. 127.*

Where a peer is to answer to a bill, his answer put in on his honour is sufficient; but where a peer is to answer interrogatories, to make an affidavit, or be examined as a witness, he must be on his oath. By *Harcourt*, lord keeper. *2 Salk in Canc. Sir Thomas Meers v. Lord Sturton.*

By

By the 1 Ed. 6. c. 12. §. 14, Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand.

Perfumery.

THE 26 G. 3. c. 49, enacts, That every person who shall vend or expose to sale any powders, pastes, or other articles subject to the duties herein after mentioned, shall take out a licence from the stamp-office, and pay for the same 1s. and shall annually renew such licence ten days at least before the end of the year, on pain of forfeiting 5l. §. 4, 5, 6, 7.

And, within twenty days of his taking out such licence, he shall cause the words, *Licensed to deal in perfumery*, to be painted or written in large and legible characters, and put over his door, or on the front of his house, on pain of forfeiting 5l. §. 8.

And whoever shall fix up or hang out such notice, or continue the same, without a licence remaining in force, shall forfeit 20l. §. 9.

Also by the same statute, §. 1, it is enacted, That upon every packet, bottle, or other inclosure, containing any powders, pastes, balls, balsams, ointments, oils, waters, washes, tinctures, essences, liquors, or other preparations or compositions whatsoever, commonly called or known by the name of sweet scents, odours or perfumes, or by the name of cosmetics, mixed or unmixed with other materials; on every packet or bottle or other inclosure containing any dentifrice powders, tinctures, or other preparation or composition for the teeth or gums; and for every roll, cake, or piece, packet, box, pot, or other inclosure, containing any pomatum, ointment, or other preparation or composition for the hair; or any hair-powder, the price whereof shall exceed 2s. a pound, shall be charged a stamp-duty according to the following rates: that is to say,

Where the contents shall not exceed the value	s.	d.
of 8d. shall be charged a stamp duty of	0	1
Above 8d. and not exceeding 1s.	0	1½
Above 1s. and not exceeding 2s. 6d.	0	3
Above 2s. 6d. and not exceeding 5s.	0	6
Of the value of 5s. and upwards	1	0

And for every packet of hair-powder not exceeding the value of 2s. a pound, shall be paid 1d. for every pound weight or under. §. 1.

Drugs and com-
mon soap ex-
cepted

But the said duties shall not extend to any drugs, or other preparation or composition used or applied as medicines, charged with a stamp-duty by 25 G. 3; nor to any common soap imported into, or made in *Great-Britain*, unmixed with any of the said sweets or perfumes. *f.* 2, 3.

The said duties to be under the management of the commissioners of the stamp-duties. *f.* 5.

Stamped covers
to be affixed, on
pain of *sh.*

And every person who shall make, or expose to sale, any such wares or articles, subject to the said duties, shall apply to the said commissioners, for covers or labels to be affixed to such articles, upon which the said commissioners shall cause some mark to be put, to denote the said duties and the rate thereof, which they shall deliver to such licensed vender, on payment of the duties due thereon; and every such packet or other article, shall have such cover fastened thereto, before it shall be vended or exposed to sale, in such manner as the commissioners shall direct. And any person who shall vend, or expose to sale, or receive any thing by way of exchange for any of the said articles, without having such cover affixed thereto, stamped as aforesaid, or with a stamp of less value than as before directed, shall forfeit 5*l.* for every such offence. *f.* 10, 11.

Exceptions.

But it shall be lawful for any person being a maker of hair-powder, having made entry according to law, the price whereof shall not exceed 2*s.* a pound, and packed in any quantity not under 224*lb.* weight at the least, to sell the same to any person dealing in hair-powder, and duly licensed as aforesaid, without any such stamped cover as aforesaid. *f.* 12.

But every such maker shall keep a book, in which he shall enter an account of all hair-powder sold by him without stamps, with the day on which the same was sold, and the name of the person to whom sold; which book the said officers may inspect in the day-time, and take copies thereof: and every person offending in any of the particulars above-mentioned, shall forfeit 20*l.* for every such offence. *f.* 13.

Persons fraudu-
lently using
covers which
have before
been used.

If any person shall fraudulently take off any such stamped cover from any such packet or article after it has been sold, or affix to any packet or article any such cover so fraudulently cut off; or shall sell or expose to sale any such wares or articles with such cover so fraudulently cut off; or shall buy or sell, or give or receive in exchange any such cover which has been before used, in order to be again made use of; or shall knowingly buy or sell, or give or receive in exchange any such wares or articles with such cover affixed thereto, he shall forfeit 10*l.* *f.* 14, 15.

And

And every person vending or exposing to sale any such wares or articles liable to the said duties, shall, before he shall obtain such licence, give notice in writing at the next stamp-office, of the particular shop, room, or place where they are intended to be kept and sold; and like notice as oft as he shall change such place; and any officer may enter in the day-time any such shop, room, or place, whereof such notice has been given, and search the several wares and articles so kept ready for sale, and examine whether they have a proper cover affixed thereto; and if any shall be found without such cover, or it shall be of less value than is by this act required, he shall affix to such articles a stamped cover as herein before directed: and if such owner, or person having the care or custody of such wares, shall not pay upon demand such sums as shall be due for such stamps, he shall forfeit 5*l.* *s.* 17.

Notice to be given in writing of places for keeping or vending.

And any person, licensed as aforesaid, who shall vend or expose to sale any of the articles subject to the duties by this act imposed, in any other shop, house, or place, than such as are described in such notice, shall forfeit 5*l.* *s.* 20.

Provided, however, that the following articles may be kept and exposed to sale, in bulk or otherwise, without any stamped cover affixed thereto, till the time of the actual sale thereof, if such cover be *bona fide* at the time of such sale affixed thereto, *viz.* almond paste, almond powder, bears' grease, cold cream, *Italian square hard soap*, *Naples soft soap*, perfumed and coloured hair-powder exceeding the price of 2*s.* a pound, rouge in pots, and all sorts of wash-balls. *s.* 17.

Articles not required to have a stamp till sold.

And it is also enacted, That nothing herein contained shall extend to charge any such articles or wares, with any of the duties by this act imposed, which shall be sold by any person duly licenced, *bona fide* for exportation. *s.* 21.

Exportation allowed without licence.

Any person who shall obstruct any officer in the execution of this act, shall forfeit 20*l.* *s.* 18.

Obstructing officers.

Any person who shall be convicted of any offence whereby any pecuniary penalty is incurred, shall forfeit his licence, and not have another granted, without giving 100*l.* bond not to offend again; and if he shall be convicted of a second offence, the bond shall be double the penal sum contained in the former bond. *s.* 22.

Persons convicted shall forfeit their licence and find surety.

All the pecuniary penalties by this act imposed, may be sued for in the courts at *Westminster*; half to the king, and half to him who shall sue, if within six months, otherwise the whole shall go to the king. Or they may be recovered before any neighbouring justice, on complaint made within

Penalties how recovered,

Perjury and Subornation.

six months after the offence is committed, who may summon the party accused, and the witnesses; and on confession, or oath of one witness, give judgment therein, and levy such penalty by distress; and if not redeemed within three days, may cause the same to be sold, rendering to the party the overplus (if any); half to the king, and half to the informer: and for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid. *f.* 26, 27.

Appeal.

And any person who shall think himself aggrieved by the judgment of such justice, may, on giving security to the amount of such penalty and costs, in case such judgment be affirmed, appeal to the next sessions, whose determination shall be final; and they may award costs as to them shall seem meet. *f.* 28, 29.

Mitigation.

But where such justice shall see cause, he may mitigate such penalties, so as not to reduce them lower than one half over and above the costs. *f.* 32.

Witness not appearing.

Witnesses who shall not appear, after having been duly summoned, without reasonable cause, to be allowed by such justice, shall forfeit 40s. *f.* 30.

Perjury and Subornation.

- I. *Perjury and Subornation by the Common Law.*
- II. *Perjury and Subornation by the Stat. of 5 Eliz.*
- III. *Of Matters common to Perjury and Subornation.*

I. *Perjury and Subornation by the Common Law.*

What is perjury at the common law.

It must be wilful.

PERJURY, by the common law, is defined a *wilful false oath*, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter *material* to the point in question, whether he be believed or not. 1 *Haw.* 172. 3 *Inst.* 164.

To constitute the offence perjury, it is necessary that the false oath be taken *wilfully*, that is, with some degree of deliberation: for if, upon the whole circumstances of the case, it shall appear probable that it was owing rather to the weakness than the perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake

of

of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 Haw.

172.

It is said not to be material whether the fact sworn be true or false, where the person who swears it knows nothing of it; for, though the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by the swearer, his offence is as great as if it had been false; as he wilfully swears that he knows a thing to be true, which he knows nothing of; and impudently endeavours to induce those before whom he swears, to proceed upon the credit of a deposition which any stranger might make as well as himself. 1 Haw. 175.

Swearing the truth, not knowing it to be so, is perjury.

But it seems clear that no oaths, taken before persons acting merely in a private capacity, or before those who take upon them to administer oaths of a public nature, without legal authority; or before those who are legally authorised to administer some kinds of oaths, but not those which might happen to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can amount to perjuries; but are altogether idle and of no force. 1 Haw. 174.

An oath administered by an improper person cannot be perjury.

The oath must be taken either in a judicial proceeding, or in some other public proceeding of the like nature, wherein the king's honour and interest are concerned; or before commissioners appointed by the king to inquire of the forfeitures of his tenants, or of defective titles wanting the supply of the king's patents; but it is not material whether the court, in which a false oath is taken, be a court of record or not, or whether it be a court of common law, or a court of equity, or civil law, &c. or whether the oath be taken in the face of the court, or out of it, before persons authorised to examine a matter depending in it; as before the sheriff on a writ of inquiry, &c. or whether it be in relation to the merits of a cause, or in a collateral matter; as where one, who offers himself to be bail for another, swears that his substance is greater than it is, &c; but neither a false oath in a mere private matter, as in making a bargain, &c. nor the breach of a *promissory* oath, whether public or private, as the general oaths given to officers or ministers of justice, the oath of allegiance and fealty, and such like, are punishable as perjury. 1 Haw. 173. 3 Inst.

Oath must be taken in a judicial proceeding to be made perjury.

It seems clear that perjury can only be committed on the taking of a *false oath*; therefore a *promissory* oath cannot be a false oath when taken, and a future breach of that oath is

Promissory oaths.

punishable as perjury. A churchwarden swears to present such things and persons as are presentable. Thus by the 4 *Jac. c. 5.* they are bound to present tippling or drunkenness, but if they do not, they are not liable to a prosecution for perjury.

Must be absolute.

And the deposition, says lord *Coke*, must be *direct* and *absolute*; and not as he *thinks*, or *remembers*, or *believes*, or the like.

And yet it was held by lord *Mansfield*, in *Pedley's case*, *T. 1784*, That a man may be indicted for perjury, in swearing that he *believes* a fact to be true, which he must *know* to be false. *Leach's Cas. in Cr. Law*, 304.

Oath to be material.

The oath taken ought to be some way material to make it perjury; for if it be wholly foreign from the purpose, or altogether immaterial; then, if it be false, it is *no* perjury; because it does not concern the point in issue, and is therefore in effect extra-judicial. 3 *Inst.* 167.

Perjury not the less so, for not being credited.

It has been holden not to be material, on an indictment of perjury at common law, whether the false oath were credited or not; or whether the party, in whose prejudice it was intended, were in the event aggrieved by it or not; for this prosecution is not grounded on the damage of the party, but on the abuse of public justice. 1 *Haw.* 177.

Subornation at the common law.

By the common law, subornation of perjury is the procuring a man to take a false oath, amounting to perjury, who actually takes such oath. *Id.*

Person not absolutely taking a false oath.

But if the person incited to take such an oath shall not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; but he is liable to be punished not only by fine, but also by infamous corporal punishment. *Id.*

By the 5 *Eliz. c. 9.* The punishment of perjury, and subornation of perjury, by the common law, shall not be less than what is inflicted by that statute; which see in the next subdivision of this title.

Power of justices.

It is now settled, says Mr. *Hawkins*, that justices of the peace have no jurisdiction over perjury at the common law, 2 *Haw.* 40. See title *Justices of the Peace*.

E. 11 G. 2. K. v. Bainton. An indictment at the quarter-sessions for perjury at the common law, was quashed for want of jurisdiction; and was said to have been done so about three years before, in the case of *K. v. Westincks. Str.* 1088.

II. Of Perjury and Subornation by the Statute of 5 Eliz.

With respect to subornation of perjury, it is enacted, by the 5 Eliz. c. 9, That whoever shall unlawfully and corruptly procure any witness by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury in any matter or cause depending in suit or variance, by any writ, action, bill, complaint, or information, in any wise concerning any lands, tenements, or hereditaments, or any goods, chattels, debts or damages; in Chancery, or in any court of record, leet, ancient demesne court, hundred court, court baron, or court of stannary; or shall unlawfully or corruptly procure or suborn any witness, who shall be sworn to testify *in perpetuam rei memoriam*, shall forfeit 40*l*.; half to the king, and half to the party grieved who shall sue for the same. And if any such offender shall not have any goods or chattels, lands, or tenements, to the value of 40*l*. then he shall suffer imprisonment half a year, and stand on the pillory one whole hour in some market-town next adjoining to the place where the offence was committed, in open market there, or in the market-town itself where the offence was committed.

And no person being so convicted or attainted, shall be received as a witness in any court of record.

And with respect to perjury, if any person shall, either by the subornation, unlawful procurement, sinister persuasion, or otherwise, wilfully and corruptly commit any wilful perjury, by his deposition in any of the courts before mentioned, or being examined *in perpetuam rei memoriam*, he shall forfeit 20*l*. in like manner, and be imprisoned six months.

And if he shall not have goods or chattels to the value of 20*l*. he shall be set on the pillory in some market-place within the shire, city, or borough where the offence shall be committed, by the sheriff or head officer respectively, and have both his ears nailed. And he shall be for ever disabled to be a witness in any court of record.

And the judges of the court where the perjury shall be, and the judges of assize, and justices of the peace in sessions, may inquire, hear, and determine thereof, by inquisition, presentment, bill, or information, or otherwise.

But this act shall not extend to any spiritual or ecclesiastical court.

And this statute shall not restrain the authority of any judge, having absolute power to punish perjury before the

making thereof; but every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said statute.

This statute particularly mentions *any witness*; therefore if the defendant perjures himself in his answer, in the Chancery, Exchequer-chamber, or the like, he is not punishable by this statute, for it extends only to witnesses. 3 *Inst.* 166.

But he is punishable for the same by indictment at common law. *Burr. Mansf.* 1189.

And on perjury in an answer in Chancery, if the name subscribed to the answer is proved to be the hand-writing of the defendant, and that he was sworn, it is not necessary to give evidence of the defendant's identity; as in the case of *John Morris, E.* 1761. *Leach's Cas. in Cr. Law*, 53.

It has been resolved that the words of the statute, by any writ, action, bill, complaint, or information, are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended that the makers of the act, who inflict a greater penalty on subornation of perjury, than on the perjury itself, should mean to extend the purview of the law in relation of what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater. 1 *Haw.* 179.

Perjury, or subornation, in an action depending by indictment, are not within this statute; but only in an action depending by writ, action, bill, complaint, or information. 3 *Inst.* 164.

The words *wilfully and corruptly* are necessary in an indictment or action on this statute; and cannot be supplied by adding *against the form of the statute*, or by concluding *and so a wilful and corrupt perjury did commit.* 1 *Haw.* 178.

Justices of the peace in sessions.] One justice, Mr. Dalton says, may bind the offender over to the sessions. *Dalt.* c. 70.

But the prosecution upon this statute is more difficult than by indictment at the common law; offenders are therefore seldom prosecuted upon this statute, especially at the sessions; and it seems generally the safer way to proceed by indictment at the common law, at the assizes, or in the court of King's Bench. 3 *Burn* 288.

Shall not restrain the authority of any judge.] Hence it seems clearly to follow, that the court of King's Bench, &c.
pro-

proceeding upon an indictment or information of perjury, or subornation of perjury at the common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any enquiry concerning the value of his lands or goods. 1 Haw. 718.

III. Of Matters common to Perjury and Subornation.

By the 23 G. 2. c. 11. §. 1, it is enacted, That in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court, or before whom the oath was taken (averring such court or person to have authority to administer the same), together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed.

On prosecution for perjury, it is sufficient to set forth the substance of the offence.

Also in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or agreed or promised to be committed. §. 2.

And the same in subornation.

And by the same statute, §. 3, It shall be lawful for any justice of assize, or *nisi prius*, or general gaol-delivery, or of any of the great sessions of Wales, or of the counties palatine (sitting the court, or within twenty-four hours after) to direct any person examined as a witness before them, to be prosecuted for perjury, in case there appear a reasonable cause; and to assign the party injured, or other person undertaking such prosecution, counsel who shall do their duty without fee. And every prosecution so directed shall be carried on without payment of any tax, and without payment of any fees in court, or to any officer of the court. And the clerk of assize, or his associate or prothonotary, or other officer of the court attending when such prosecution is directed, shall, without fee, give the party injured, or other person undertaking such prosecution, a certificate of the same, being directed, with

Judges may order witnesses to be prosecuted for perjury if they shall see cause.

with the names of the counsel assigned him; which certificate shall be sufficient proof of such prosecution having been directed as aforesaid. Provided that no such direction or certificate shall be given in evidence upon trial. -/ 3.

Further punishment of perjury and subornation by 2 G. 2.

For a further punishment of perjury, or subornation of perjury, it is enacted, by the 2 G. 2. c. 25. (at first a temporary act, but made perpetual by the 9 G. 2. c. 18.) That besides the punishment already inflicted, the judge may order the offender to be sent to the house of correction, for a term not exceeding seven years, to be kept to hard labour; or otherwise to be transported for any term not exceeding seven years.

Insufficient indictment not often quashed.

The court generally will not quash an indictment for a crime of so enormous a nature as perjury, for insufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Haw.* 258.

An immaterial variance in an indictment for perjury, is not a sufficient cause why judgment should be arrested; as in the following case:

K. v. Beech, M. 15 G. 3. In the King's Bench, the defendant had been convicted of perjury in an affidavit, and a rule had been obtained to shew cause why the judgment should not be arrested. Mr. Buller and Mr. Dunning, in support of the rule, relied upon the variance between the indictment and affidavit. In the affidavit the defendant swore, that "he understood and believed," &c. The assignment of the perjury in the indictment was, that "he had falsely sworn that he *undertood* and believed," &c. omitting the letter *f*; and they insisted that this being a variance in the material part of the charge, viz. in the assignment of the perjury itself, was fatal, and could not be cured by verdict, and cited 2 *Salk.* 660. *Hutton*, 56. *Cro. Jac.* 133. 5 *Co.* 45. *Ld. Raym.* 1224. Lord Mansfield: This is an application for a new trial in an indictment for perjury, upon the ground of a material variance between the affidavit and indictment, the letter *f* being left out in the word *understood*. We have looked into all the cases on the subject, some of which go to a great degree of nicety indeed; particularly the case in *Hutton*, where the word *indicari* was written for *indictari*; but that case is shaken by the doctrine laid down in 2 *Hawkins P. C.* p. 239. The true distinction seems to be taken in the case of the *Q. v. Drake* (2 *Salk.* 660.) which is this: That where the omission or addition of a letter does not change the word, so as to make it another word (as *air* for *beir*) the variance is not material. There is certainly a greater strictness required in criminal

criminal prosecutions than in civil cases; and in the former a defendant is allowed to take advantage of nicer exceptions. But this is a case where the matter has been fairly tried, and where the omission of the letter *s* certainly does not change the word. Therefore we are all of opinion, That the jury were very right in reading it *understood*, and the rule for arresting the judgment must be discharged. *Leach's Cas. in Cr. Law, 137.*

Note, the introductory words in the indictment in this case were, "to the tenor and effect following." *Douglas 194.*

But to convict a man of perjury, a probable evidence is not sufficient; it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath. *10 Mod. 194.*

And the party prejudiced by the perjury, shall not be admitted to prove the perjury. *Ld. Raym. 396.*

Party injured.

And yet a convict, on the 31 G. 2. c. 10, for taking a false oath, who is pardoned before judgment, is a competent witness against the person who suborned him to take such oath; as in the following recent case:

A person convicted of taking a false oath, if pardoned before judgment, is a competent witness against the person who suborned him to take such oath.

At the Old Bailey, in July session 1787, *John Macdaniel* was tried on the statute 31 G. 2. c. 10. s. 24, which enacts, "That whosoever shall willingly and knowingly take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration in order to receive the payment of any wages, pay, or other allowances of money, or prize-money, due, or that were supposed to be due, to any officer, seaman, or other person entitled, or supposed to be entitled to any wages, pay, or other allowances of money, or prize-money, for services done on board any king's ship or vessel, who has really served, or was supposed to have served, on board any king's ship or vessel; every such person so offending shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy." He was convicted on this statute, before *James Adair, Esq.* recorder, for taking a false oath "That one *James Lewis*, a seaman on board his majesty's ship the *Hannibal*, died a bachelor, intestate, and without a parent, and that he, *John Macdaniel*, was his lawful brother, and next of kin;" with intent to obtain letters of administration to the goods and chattels of the said *John Lewis*, &c. In the course of the trial it was discovered, that a person of the name of *Thomas Reilly*, who appeared as a witness, had taken advantage of the prisoner's

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soner's ignorance, and had suborned him to commit the offence. *Thomas Reilly* was accordingly committed to take his trial at the next session, and no judgment was passed upon the prisoner *John Macdaniel*. In the September session following, on the trial of the indictment against *Reilly*, for procuring *John Macdaniel* to take the said false oath, *John Macdaniel* was produced as a witness on the part of the crown. Mr. *Shepherd* and Mr. *Garrow*, the counsel for the prisoner, produced the record of his conviction in the July session preceding, and submitted to the court, that his competency was thereby destroyed, notwithstanding the conviction had not been yet followed by a judgment; but Mr. *Silvester* and Mr. *Fielding*, the counsel for the crown, waived the argument upon this point; and, on *Macdaniel's* being called upon to say why the court should not give him judgment to die, according to law, he pleaded his majesty's pardon in bar, and it was regularly allowed. The question therefore was, Whether a special pardon granted after a conviction on *this statute*, but pleaded and allowed in bar of the judgment, restored the witness to his competency? or, Whether it only remitted him from the punishment, to which he would have been liable in consequence of an attainder? In favour of the prisoner it was contended, that as a pardon, by the particular manner in which it is penned, merely imports an intention on the part of the king, to discharge the party from future punishment, it was to be considered as a *charter of remission* only; and could not, by consequence and deduction, be considered as a *charter of restoration*, so as to remove the disability to which the witness has once been rendered liable, and enable him thereby to prejudice the interests of third persons, by giving evidence against them. On the part of the crown it was contended, that the king's pardon not only remits the punishment, but restores the convict to his *plenam et liberam legem*. (2 Hale 278.) The court were clearly of opinion, That, in cases of felony, a pardon from the crown restores the competency of the convict, and that the verdict against *Macdaniel* was to be considered as a conviction of a felony, committed through the medium of perjury, and not as a conviction of perjury itself. The testimony of *Macdaniel* was accordingly received in evidence, and the jury acquitted *Abraham Davis*, and found *Thomas Reilly* guilty of the offence with which he stood charged in the indictment. But the judgment was respited, and the case submitted to the consideration of the twelve judges. Mr. justice *Wilson*, in June session 1788, after stating the particulars of the case,

above recited, delivered the opinion of the judges to the following effect: The learned judge, who tried this indictment, entertained some doubt respecting the competency of *Macdaniel's* testimony. The case was therefore reserved for the consideration of the judges; and they were of opinion, That if *Macdaniel* had not received his majesty's pardon, some doubt might have been entertained; but as he was pardoned, and that pardon regularly allowed, they are clear that it not only respites the convict from punishment, but entirely absolves him from the crime, and restores him completely to his former competency and credit. The case of *Cuddington v. Wilkins*, in lord chief-justice *Hobart's* Reports, is precisely in point, and decisive of the question; for it is there expressly determined, that the king's pardon not only clears the offence itself, but all the dependencies, penalties, and disabilities incident to it. The judges, therefore, are of opinion, That the testimony of *Macdaniel* was properly admitted in evidence; and that *Thomas Reilly*, the prisoner at the bar, has been legally convicted on this indictment. The prisoner received sentence of death. *Leach's Cas. in Cr. Law*, 396.

A person convicted of perjury is disabled from being a juror. 2 *Haw.* 417.

And he is incapable of being a witness. 2 *Haw.* 433.

By the 8 G. c. 6. s. 2, Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. Quakers

It seems that the court will not ordinarily, at the prayer Certiorari. of the defendant, grant a *certiorari* for the removal of an indictment of perjury; for such crimes deserve all possible discountenance, and the *certiorari* might delay, if not wholly discourage the prosecution. 2 *Haw.* 287.

Perry. See ALEHOUSES.

Personating.

BY the 31 G. 2. c. 22. s. 67, it is enacted, That if any person or persons whatsoever shall falsely and deceitfully personate any proprietor of the share or shares, or any part of any share or shares, annuities, or dividends, of or in such capital stocks or funds as have been established by the authority Personating a proprietor of stock, death without benefit of clergy.

authority of parliament, since the passing of the statute of the 8 G. 1. c. 22, and thereby transferring, or endeavouring to transfer the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then every such person or persons shall be guilty of felony, and suffer death as a felon without benefit of clergy.

The following conviction on this statute, is entitled to the deliberate consideration of the reader. At the Old Bailey, in January sessions 1787, *Francis Parr* was tried by Mr. serjeant *Adair*, recorder, on this statute, for personating *Isaac Hart*, of *Windsor*, the true and real proprietor of 3900*l.* capital stock, and thereby falsely endeavouring to receive from the governor and company of the Bank of *England* the sum of 58*l.* 10*s.* as and for half a year's annuity, as if he was the said true and lawful owner of the money. It appeared in evidence, that the prisoner applied to Mr. *George*, the dividend-payer of the three per cent. consols at the Bank, for the dividend on 3900*l.* stock, in the three per cent. consols, amounting to 58*l.* 10*s.* This application was in the following form: The prisoner said, "*Isaac Hart 3900*l.**" Mr. *George* asked, "Of what place?" The prisoner replied, "*Of Windsor.*" Mr. *George* turned the dividend book round to the prisoner, and he signed the name *Isaac Hart*, as the proprietor. Mr. *George* then gave the prisoner a dividend warrant for the sum of 58*l.* 10*s.* which the prisoner indorsed in the name *Isaac Hart*. In order to receive the money upon a dividend warrant, it is necessary for the bearer of it to apply to the pay-office, which is situated at some distance from the office in which the warrants are delivered out; but it was in proof that the prisoner, instead of attempting to receive the money at the pay-office, had walked a different way with the warrant in his pocket, and no attempt was in fact ever made to receive it; for the prisoner was apprehended in about ten minutes after he had procured the warrant; as he was standing unconcerned in the rotunda of the Bank. It was contended in favour of the prisoner, that this evidence did not maintain the charge in the indictment, or satisfy the meaning of the statute on which it was founded. The legislature, they said, had made two distinct and independent acts necessary to be performed before the offence could be compleated. First, That the true and real proprietor of the stock should be personated. Secondly, That the person personating the proprietor should endeavour to receive the money. In obtaining the warrant the prisoner has certainly compleated the first act which the statute

statute mentions, of personating the true and real proprietor of the stock; by which means he was enabled to perform the other requisite to the completion of the offence, viz. *endeavouring* to receive the money. The mere act of obtaining the warrant cannot be construed an endeavour thereby to receive the money; because it is, the instrument only by the means of which the *endeavour* is afterwards to be made. They are two distinct and separate acts. The warrant furnished the means of receiving the money; but, if the party does not by the use of those means *endeavour* to receive the money, he has barely procured the means of completing the offence; but it cannot be said that he has *thereby endeavoured* to receive it. If the prisoner had gone to the pay-office and tendered the warrant, or prepared, or shewed any design or intention so to do, it would have been an endeavouring thereby to receive the money; but, instead of using any endeavour for this purpose, he silently put the warrant in his pocket, and walked a different way, without doing any act, or discovering the least intention to complete the offence. It is evident from the preamble and general scope of the act of parliament, that it was intended to prevent the property vested in the funds from being tortiously obtained by those who have no title to it; and, to complete the offence, the act done must be such as would effectuate the mischief, which the legislature intended to prevent. No act, therefore, from which that mischief would not immediately and unavoidably result, can be considered within the meaning of the statute. An interval is afforded for repentance to interpose between the two acts of personating the proprietor, and endeavouring to receive the money; and if, during the progress of completion, the final perpetration of the crime is prevented, either by the suggestions of conscience or premature detection, the offender cannot be found guilty. The court were of opinion, That the act of personating the proprietor, and thereby obtaining the warrant to receive the dividend, was evidence of an *endeavouring* to receive the money; and, the facts of the case being left with the jury; they found the prisoner *guilty*; but on account of the importance of the question, it was thought proper to respite the judgment, and to refer the point of law to the determination of the *twelve judges*.—Mr. justice Gould, in the *February sessions* following, after stating the form of the indictment, the facts that were given in evidence, and the words of the statute, delivered the opinion of the judges to this effect: This case has been taken into consideration by all the judges, and has been attended to with

with deep and serious deliberation; and it is their unanimous opinion, That the manner in which the prisoner applied to the officer of the dividend-office at the Bank, and obtained the warrant, was a personating of *Isaac Hart*, the true and lawful proprietor of the stock, and that the prisoner thereby *endeavoured* to receive the money of *Isaac Hart*, within the true intent and meaning of the act. If he had actually received the money, he would have accomplished the mischief against which the legislature intended to guard; and then no possible doubt could have existed with respect to his guilt: the legislature, therefore, has wisely attempted to prevent the mischief, by enacting, that no person shall *endeavour* to take any steps towards obtaining the money which others have lodged in the funds. The question therefore is, Whether the prisoner did take any steps for this purpose? and the jury have found that he came forward, personated and assumed the name of a real proprietor. He called himself *Isaac Hart*; he wrote the name *Isaac Hart* in the Bank-book; the dividend warrant is made out in that name, and in that name the prisoner indorsed it; by which indorsement any person who should be the bearer of it, was entitled to receive the dividend at the pay-office. This statement of the facts alone, without using any argument, is sufficient to shew that the prisoner, by personating the proprietor, and by obtaining and indorsing the warrant, thereby made an *endeavour*, as far as it went, towards receiving the dividend. The judges therefore are unanimous, that the evidence supported the charge, and that the prisoner is legally convicted, within the meaning of this act of parliament. The prisoner received sentence of death at the close of the session, and was executed accordingly. *Leach's Cas. in Cr. Law*, 372.

Petition.

PETITION has a general signification for all kinds of supplications made by an inferior to a superior, and especially to one having jurisdiction. *S. P. C. c. 15.* And it is used for that remedy which the subject has to help a wrong done by the king, who has a prerogative not to be sued by writ. *Staundf. Prerog. c. 22.*

By the 13 *C. 2. c. 5*, No person shall solicit, labour, or procure the putting the hands or consent of above twenty persons

persons to any petition to the king, or either house of parliament, for alterations in church or state; unless by assent of three or more justices of the peace of the county, or a majority of the grand jury, at the assizes or sessions; or if arising in *London*, by the lord mayor, aldermen, and common council; nor shall repair to the king or parliament to deliver such petition, with above the number of ten persons, on pain of a sum not exceeding 100*l.* and three months imprisonment, being proved by two witnesses within six months, in the court of King's Bench, or at the assizes, &c.

But this shall not extend to debar any persons (not exceeding ten in number) to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit Larceny. See LARCENY.

Petit Treason. See TREASON.

Pewter and other Metals.

BY the 19 *H. 7. c. 6*, No person shall cast or work any pewter vessel or brass that is not as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be, on pain of forfeiting the same; half to the king, and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or mysteries.

Fines in making pewter and brass.

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley-metal within *London*; and the makers shall mark them with their own mark, that they may avow them by them wrought; and the same not sufficiently made and wrought, and not marked, found in the possession of the maker or seller, shall be forfeited; and if it be sold, the maker shall forfeit the value thereof; half to the king, and half to the finder or searcher. *Id.*

Ley metal.

And the master and wardens of the craft of pewterers, and where there are none such the head and governors of

Pewter and other Metals.

the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. *Id.*

In default of the master and wardens not searching, any person having sufficient knowledge in the said occupation, by oversight of the mayor or other head officer of cities or boroughs, may search. *Id.*

Offering base
metal to sale.

And by the 4 *H. 8. c. 7*, If any untrue metal or workmanship of tin or pewter be found in any wares brought to be sold, the mayor of *London*, and the master and wardens of the pewterers, may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and, where there are no wardens, the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter are found defective, and in the possession of the seller, the person putting them to sale shall forfeit the same; half to the king, and half to the searcher or finder.

f. 7.

Selling, where.

No person using the crafts of pewterer and brazier shall sell or change any pewter or brass at any place but in open fair or market, or in his own dwelling-house, except he be desired by the buyer of such ware, on pain of 10*l*; half to the king, and half to him who shall seize or sue. 19 *H. 7. c. 6.* 25 *H. 8. c. 9. f. 6.*

Buying and
selling by false
weights.

Buyers and sellers of pewter, or brass, who shall occupy any false beams or weights, and every person using the same, shall forfeit 20*s*; half to the king, and half to him that shall sue; and also the beams to him that shall seize them. 19 *H. 7. c. 6.*

And if the offender cannot pay the forfeiture, the mayor or other head officer where he shall be found, shall put him in the stocks, and so keep him till the next market day next adjoining, and in the market-place put him in the pillory all the market time. *Id.*

Importation.

No person shall buy, or take by exchange, (or otherwise take into or within this realm to the intent to sell the same, 33 *H. 8. c. 4. f. 7*), any wares made out of this realm, of tin or mixed with tin, as dishes, saucers, flagons, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof; half to the king, and half to the finder. 25 *H. 8. c. 9. f. 1.*

And the master and wardens of the pewterers, and, where there

there are none, the head officer of the town may appoint searchers, who may seize the same. *f. 2.*

Any person interrupting or disturbing the said seizure shall forfeit 5*l.*; half to the king, and half to him who shall sue. 33 *H. 8.*

No person shall carry over sea, any brass, copper, latten, bell-metal, pan-metal, gun-metal, nor shroff-metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10*l.* for every thousand weight, 2 & 3 *Ed. 6. c. 37.*); half to the king, and half to him who shall sue. 33 *H. 8. c. 7.*

Exporting brass and copper.

Pheasants. See GAME.

Physician.

BY the 32 *H. 8. c. 40.* The president of the commonalty and fellowship of the faculty of physic in London, and the commons and fellows of the same, shall be discharged of watch and ward there, and shall not be chosen constable, or any other officer. *f. i.*

Physicians exempted from offices in London.

But it seems to have been holden, that the equity of this act does not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge, as surgeons are said to have. 2 *Haw. 64.*

It seems that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for there are no precedents of this kind, and his calling is private; yet, if he be chosen constable of a town, which has sufficient persons besides himself to execute this office, and no special custom concerning it, perhaps he may be relieved by the King's Bench. 2 *Haw. 63.*

All justices, mayors, sheriffs, bailiffs, constables, and other officers in London, shall assist the president of the college of physicians, and persons by them authorized, in searching for faulty apothecaries wares. 1 *Mar. sess. 2. c. 9. f. 6.*

Searching for faulty drugs.

By the 3 *H. 8. c. 6.* it is enacted, That surgeons shall be discharged of the constableship, watch, and all manner of office bearing any armour, and also of all inquest and juries within London.

Surgeons exempted from offices.

Surgeons of the company.

And by the 18 G. 2. c. 15, Freemen of the surgeons company in *London*, shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests. *f. 10.*

And Mr. *Hawkins*, speaking of the former of these statutes, says, it seems that by the equity thereof, and the ancient custom of the realm, all surgeons have been allowed the like privilege; that is, whether in *London* or elsewhere. 2 *Haw.* 64.

Apothecary exempted from offices.

Apothecaries within *London* and seven miles thereof, and apothecaries in any other place who have served seven years apprenticeship, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest. 6 *W.* c. 4.

Recusants cannot practise physic.

By the 3 *Jac.* c. 5. *f. 8.* No recusant convict shall practise physic, nor use the trade of an apothecary, on pain of 100*l.*

By the 14 & 15 *H.* 8. c. 5. *f. 3.* No person shall be suffered to practise in physic through England, until he be examined at *London*, by the president and three of the elects, and have from them letters of testimonials, except he be a graduate of *Oxford* or *Cambridge*, &c.

Pickpockets. See LARCENY.

Pigeons. See GAME.

Pillory.

Pillory, what.

PILLORY, in Latin *collistrigium*, from the offender's neck being put between two boards, a well-known engine made of wood. It is a very ancient punishment in this kingdom, and was used heretofore by the Saxons. 3 *Inst.* 219. In the laws of *Canutus*, c. 42, it is called *Halsfange*.

Pill, in most of the European languages, signifies to spoil, plunder, or pillage. And pillory, which we have from the French *pilleurie*, has been improperly applied to denote the mode of punishment, whereas it signifies the offence, as *pilleur* signifies the offender. *Barringt.* 30.

Tumbrel.

The tumbrel is an engine of punishment, which ought to

to be in every liberty that has view of frank-pledge, for the correction of scolds and unquiet women. *Kitch. 13.* It seems to have been anciently the same with the ducking-stool, an engine for the punishment of scolding women, by ducking them over head and ears in muddy and stinking water. *Lamb. 61. 3 Inst. 219.*

Every one who has a leet or market, ought to have a pillory and tumbrel to punish offenders; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. Who are to procure them.

Those who have been adjudged to the pillory or tumbrel are rendered so infamous, that they shall not be received to be jurors or witnesses. *3 Inst.* Infamy of the punishment.

The punishment of the pillory is specially ordained by several statutes,

Plague.

BY the 26 G. 2. c. 6, it is enacted, That all vessels, persons, and goods coming from any place, from whence the king, with the advice of his privy council, shall judge it probable that the infection may be brought, shall be obliged to make their quarantine in such places, for such time, and in such manner as shall be directed by him, or by his order in council, and notified by proclamation, or published in the Gazette. *f. 1.* Quarantine enjoined to be performed.

And by the same statute, *f. 20,* when the king shall make any orders concerning quarantine, and notify such orders by proclamation, or in the Gazette, they shall be publicly read the next Sunday, and the first Sunday in every successive month (during the time such orders shall continue) immediately after prayers, in all places set apart for divine worship, within the places specified in such proclamation or orders. *Id. f. 20.* Orders for quarantine to be read in churches.

If the plague shall appear on board any ship to the north of Cape Finisterre, the master shall immediately proceed to the harbour of [St. Helen's Pool, between the uninhabited islands of St. Helen's Tean, and North Withell, or to such other place as his majesty by advice of his privy council shall appoint; 29 G. 2. c. 8.] where he shall make known his case to some officer of the customs, who shall forthwith acquaint some custom-house officer of some near port of Masters of ships to give notice.

England, who shall with all possible speed send intelligence thereof to a secretary of state, and the ship shall remain there till his majesty's pleasure be known; nor shall any of the crew go on shore.

And remain in some open road.

But if he cannot make the islands of *Scilly*, or if he shall be forced by weather or otherwise to go up either of the channels, he shall not enter any port, but remain in some open road, till he receives orders from his majesty or his privy council; and shall prevent any of the crew from going out of the ship, and avoid all intercourse with other ships or persons. And such master, or any other person on board, who shall be disobedient herein, shall be guilty of felony without benefit of clergy; and may be tried where the offence shall be committed, or where he shall be apprehended. *Id. s. 2.*

Watchmen to be appointed in the most proper places.

And by the 9 *Ann. c. 2*, the justices of the counties adjoining, or one of them, shall forthwith, when quarantine shall be appointed, cause watches to be kept by day and night, in the most proper and convenient places, within the several adjacent parishes; who shall not permit any person to come on shore therefrom, or go on board any ships under quarantine, except such as shall have the charge of seeing the quarantine duly performed, or as shall be licensed by such person having the charge of the quarantine.

Watch neglecting duty.

And by the 26 *G. 2. c. 6. s. 17*, If any superintendent of the quarantine, or watchman, shall neglect his duty, he shall be guilty of felony without benefit of clergy.

Vessels to be examined by the principal officer of the customs.

When any country or place is infected, or when any order shall be made by the king concerning quarantine, as often as any vessel shall attempt to enter any port, the principal officer of the customs there, or person authorised to see quarantine performed, shall go off, or cause some other person to go off, to such vessel; who shall at a convenient distance demand of the commander, the name of the ship and of the commander, and at what place the cargo was taken on board; where the vessel touched in her voyage; whether such places, or any, and which, were infected with the plague; how long she has been in her passage; how many persons were on board when she set sail; whether any, and what persons, during the voyage, have been or are infected; how many died in the voyage, and of what distemper; what vessels he, or any of his company with his privy, went on board, or had any of their company come on board his ship, and to what place they belonged; and also the true contents of his lading, to the best of his knowledge: and if it shall appear on such examination, or other-

otherwise; that any person on board is infected, or that such ship is obliged to perform quarantine; the officers of any of his majesty's ships of war, or of any forts or garrisons, and all other his majesty's officers whom it may concern, and others whom they shall call to their assistance, shall, on notice thereof, oblige such ship to repair to the places appointed for quarantine, be it by firing of guns, or other force: and if she shall come from any place infected, or shall have any person on board infected, and the master shall conceal the same, he shall be guilty of felony without benefit of clergy; and if he shall not make a true discovery in any other of the particulars, he shall forfeit 200*l*; half to the king, and half to him who shall sue. 26 G. 2. c. 6. *f. 3.*

Should any officer of the customs, or other officer, neglect his duty herein, he shall forfeit his office and 100*l*. in like manner. *Id. f. 11.* Officer neglecting his duty.

And the master, after his arrival at the place of quarantine, shall deliver on demand to the chief officer appointed to see quarantine duly performed, such bill of health and manifest as he shall have received from any *British* consul, together with his log-book and journal; on pain of 500*l*. in like manner. *f. 4.* Master to deliver his credentials.

And if the master shall quit, or knowingly suffer any person to quit the ship, by going on shore, or on board any other vessel, before the quarantine shall be performed, except in such cases as shall be permitted by the orders concerning quarantine; or if he shall not, in convenient time after notice, cause the vessel and lading to be conveyed to the place appointed for quarantine, he shall forfeit 500*l*; half to the king, and half to him who shall sue. And if any one shall quit such ship, all persons may, by any kind of force, compel him to return; and he shall, for such offence, be imprisoned six months, and forfeit 200*l*; half to the king, and half to him who shall sue. *f. 5.* Penalty on the master's quitting the ship before quarantine shall be performed.

And every person liable to perform quarantine shall be subject to such orders as he shall receive from the officer authorized to see it performed; who shall have power to enforce obedience, and, in case of necessity, to call others to their assistance. *Id. f. 9.* Obedience enforced.

And by the 9 *Ann. c. 2.* Any officer of the customs, or others, directed to take care of the quarantine, may seize any boat belonging to such vessel, and detain it till quarantine be performed. Ships boats may be seized.

And if the commander of any such ship shall go himself, or permit any seaman or passenger to go on shore, or on board Penalty of quitting the ship.

Person coming
on shore, may
be compelled to
return.

Persons going
aboard.

Lazarets to be
appointed in
waste grounds,
commons, or
elsewhere.

board any other vessel, during the quarantine, without licence of the person having charge of the quarantine; the ship and tackle shall be forfeited to the king. *Id.*

And should any person come on shore, or go aboard any other ship, the persons appointed for seeing quarantine performed, may compel him to return and continue during the quarantine: and the person so leaving the ship, and being (after expiration of the quarantine) convicted thereof by oath of one witness, before one justice near, shall forfeit a sum not exceeding 20*l.* to be paid immediately to such justice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the parish where the conviction shall be; and in default of payment, he may commit him to the house of correction to hard labour, not exceeding one month. *Id.*

And if any person shall go on board any such ship, and return during the quarantine, without such licence, he may be compelled by the persons appointed as aforesaid, to return and continue on board during such quarantine; and the master of such ship shall there maintain him. *Id.*

By the 26 G. 2. c. 6. *f.* 6, Whenever the king, with the advice and consent of parliament, shall direct lazarets to be provided for the reception of persons obliged to perform quarantine, or of airing of goods, it shall be lawful to erect such lazarets, either in any waste grounds or commons, or where there are not sufficient, in the several grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his sign manual; and if they cannot agree, such two persons shall, thirty days before the sessions, give to the occupier a notice in writing, describing the quantity of ground, and purporting that the consideration of it will be settled by a jury at such sessions. And the justices there, on proof of such notice, shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee), and cause to be sworn, well and truly to assess the value of such grounds, to whom the parties may have their lawful challenges; and the verdict of the said jury, and the judgment of the justices thereupon, shall finally bind all parties; and thereupon the king shall hold such ground for such term as he shall judge necessary, paying for it such rent or other consideration as shall be so assessed.

And

And by the 12 G. 3. c. 57, The lords of the treasury may contract for an absolute purchase of such lands, messuages, and tenements, to be unalienably vested in the crown: and if the parties cannot agree, the price shall be settled at the sessions as aforesaid, on giving like notice to the owner.

And the officers who are authorised to put in execution such orders as aforesaid, shall cause all persons obliged to perform quarantine, and all goods comprized in such orders, to be conveyed to some of the said lazarets, or to such other places as shall be provided according to such orders.

26 G. 2. c. 6. s. 7.

And by the same statute, s. 8, If any person shall refuse or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or shall escape or attempt to escape from thence, before quarantine performed, the watchmen, and other persons appointed to see quarantine performed, may compel him to repair or return thither; and every person so refusing or neglecting to repair thither, and also every person actually escaping, shall be guilty of felony without benefit of clergy.

And if any person not infected, nor liable to perform quarantine, shall enter any lazaret, or other such place, and shall return or attempt to return, unless as permitted by such orders, the watchmen, or other persons appointed, may compel him to return and perform quarantine: and if he shall actually escape before he has performed quarantine, he shall be guilty of felony without benefit of clergy. *Id.* s. 10.

When any part of Great-Britain, Ireland, Guernsey, Jersey, Alderney, Sark, or Man, France, Spain, Portugal, or the Low Countries, shall be infected, the king by proclamation may prohibit all small boats and vessels, under the burden of twenty tons, from sailing out of port, till security shall be given by the master, to the satisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king, with sureties, in the penalty of 300*l.* that he shall not go or touch at any place mentioned in the proclamation; and that the master, and every mariner and passenger, shall not, during the time aforesaid, go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; or receive any goods out of any other vessel; for which bond no fee shall be taken: and if such boat or vessel shall sail before such security shall be given, the same, with the tackle and furniture, shall be forfeited to the king; and the master, and every mariner on board, being thereof convicted, on his appearance or default, on oath of one witness, by one justice

Persons and goods to be conveyed to such lazarets.

Persons refusing to repair to the lazaret.

Persons entering lazarets, not to return till quarantine performed.

Restrictions respecting the sailing of vessels out of port.

justice where the offence shall be found, shall forfeit 20*l*. half to the informer, and half to the poor of the parish where the offender shall be found, by distress; and for want of sufficient distress, to be committed to prison for three months. *Id.* *f.* 19.

Discharge, after performing quarantine.

After quarantine shall be performed, and proof thereof shall be given, by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses, before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the vessel and every such person are free from infection; and after producing a certificate thereof, signed by the chief officer who superintended the quarantine, such officer of the customs, together with the said justice, shall give a certificate thereof, and thereupon the vessel, and every such person, shall be liable to no farther restraint. *Id.* *f.* 13, 14.

Goods liable to quarantine shall be opened and aired.

And all goods liable to quarantine shall be opened and aired, as by such orders shall be directed; and, after such order has been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarantine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof, by such custom-house officer, to the commissioners of the customs, they, or any two of them, by their order, shall discharge the same. *f.* 15.

Taking a fee.

And any person who shall take any fee for such oath, order, or certificate, shall forfeit 100*l*.; half to the king, and half to him who shall sue, *f.* 16.

Giving a false certificate.

And any superintendant of the quarantine, or watchman, who shall in such case give a false certificate, shall be guilty of felony without benefit of clergy. *f.* 17.

Assessment for relief of persons infected with the plague.

By the 1 *fac. c.* 31, it is enacted, That the mayor, head officers, and justices of the peace of every city, borough, town-corporate, and places privileged, or any two of them, may assess every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the same, then, upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. *f.* 2. 3.

Where inhabitants are incapable of affording relief.

And if the inhabitants of such place shall be unable to relieve all such persons, then, on certificate thereof by the said

said magistrates, or two of them, to the justices of the county of or near the said city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at such weekly sums as they shall think reasonable, to be levied by their warrant by sale of goods, and in default thereof, by imprisonment as aforesaid. *Id.* f. 4.

And if such infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may assess the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit for the relief of persons infected; to be levied by their warrant by sale of goods, and in default thereof by imprisonment as aforesaid. f. 5.

If the infection be in a town, village, or hamlet.

All which said taxes shall be certified at the next quarter sessions, for such town or county respectively; and then and there they may order the same to continue, or be extended to any other part of the county, or otherwise determined, f. 6.

Such tax to be certified at the quarter-sessions.

And the officer making default in levying the same, shall forfeit 10s. to be employed to the charitable uses aforesaid. *Id.*

Also by the same statute, f. 9, The justices, mayors, and other head officers, may appoint within their limits, searchers, watchmen, examiners, keepers, and buriers, for the places infected; giving them directions, and swearing them for the performance thereof.

Searchers, watchmen, examiners, keepers, and buriers.

And by the 26 G. 2. c. 6. f. 18, If any person shall conceal from the officers of quarantine, or convey any letters or goods from any ship under quarantine, or from any lazaret, he shall be guilty of felony without benefit of clergy.

Secreting letters or goods under quarantine.

And if any officer or other person shall embezzle or damage any goods performing quarantine, he shall pay treble damages, with full costs. *Id.* f. 11.

Damaging goods.

The statute of the 9 Ann. respecting the plague, was repealed by the 7 G. 3. c. 3, but revived by the 8 G. c. 8; and the said statutes of 7 G. and 8 G. were temporary, and expired on the 25th of March 1723; but the act of the 9 Ann. c. 2, continues in force.

Plate.

BY the 32 G. 2. c. 24, it is enacted, That no person who shall trade in, vend, or sell any gold or silver plate, or any goods or wares, in which any gold or silver shall be

Licence to be taken out annually.

manu-

manufactured, shall either publicly or privately trade in, vend, or sell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of thirty ounces or upwards, unless he shall have first paid the duty of 5*l.* for a licence to be taken out in the manner following. *1. 3.*

How such licence is to be taken out.

If within the limits of the chief office of Excise in *London*, such licence shall be granted under the hands and seals of two commissioners of excise; and the duty of it shall be paid at the chief office of Excise in *London*, or any other place, and to such persons as the said commissioners shall appoint to deliver out such licences, and to receive the said duty: elsewhere it shall be granted under the hands and seals of the several collectors and supervisors of excise, within their respective districts; and the duty shall be paid by the persons taking out such licences, at the office of Excise next adjoining to the place where they respectively reside, or any other place, and to such persons as the commissioners of excise shall appoint to deliver out such licences, and receive the said duty. *31 G. 2. c. 32. s. 3.*

When to be taken out.

And a fresh licence shall be taken out yearly, ten days at least before the expiration of twelve calendar months after taking out the former licence. *Id. s. 4.*

Penalty incurred by dealing in plate unlicensed.

And any person who shall presume to trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of thirty ounces or upwards, without first taking out such licence, and renewing it yearly, shall forfeit 20*l.* *Id.*

But not to extend to small quantities.

But, by the *32 G. 2. c. 24. s. 1*, No person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two penny weights, or of silver not exceeding five penny weights, in any one separate and distinct ware or piece of goods.

Pawnbrokers and refiners to take out a licence, and renew it annually.

And by the same statute, no pawnbroker shall by himself, or by any other for his benefit, (publicly or privately) trade in or sell any gold or silver plate, or any goods in which any gold or silver shall be manufactured; and no person by himself or by any other for his benefit shall use the trade of a refiner of gold or silver, without taking out and renewing yearly such licence as aforesaid.

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *Id.*

And

And any pawnbroker who shall sell any gold or silver plate, or any goods in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not renew the same yearly, and make such payment as aforesaid, shall forfeit 20*l*. *Id.*

Persons using the trade of selling gold or silver plate, or any goods composed of gold or silver, or in which any gold or silver shall be manufactured; and also those employed to sell any gold or silver plate, or any such goods aforesaid, at any auction or public sale, shall be deemed traders in, and sellers of gold or silver plate, and shall take out a licence for the same. 31 G. 2. c. 32. s. 6.

Auctioneers,
&c. selling
plate, to take
out a licence.

And no licence shall authorise any person to whom it may be granted, and who shall sell such gold or silver plate in shops, to trade in, or sell such gold or silver plate in any other shop or place than in such houses or places thereunto belonging, wherein he shall inhabit at the time of granting such licence, or in booths or stalls at fairs or markets. *Id.* s. 7.

To what places
the licence
shall extend.

Persons in partnership and carrying on their joint trade, in one house, shop, or tenement only, shall not be obliged to take out more than one licence in each year. *Id.*

Partners.

Prosecutions for offences may be commenced in the courts at *Westminster*; or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise; and in case of appeal, before the commissioners of appeal; and elsewhere, before two justices residing near where the offence was committed. *Id.* s. 11.

Prosecutions for
offences.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall, upon complaint or information on oath, summon the party accused; and, upon his appearance or contempt, proceed to the examination of the fact; and on proof by confession, or oath of one witness, shall give judgment, and issue warrants under their hands for levying the penalties by distress (if not redeemed in fourteen days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *Id.*

But by the 32 G. 2. c. 24. s. 8, They may mitigate the said penalties of 20*l*. as by the laws of excise.

Mitigation.

And persons who think themselves aggrieved may appeal to the next sessions. 31 G. 2. c. 32. s. 11.

Appeal.

All forfeitures (the necessary charges for the recovery thereof

Disposal of the
forfeitures.

thereof being first deducted) shall be distributed, half to the king, and half to him that shall inform or sue. *Id.* §. 12.

Exportation.

By the 9 & 10 *W. c.* 28, So much wrought plate shall be exported yearly, as shall be allowed by the commissioners of the customs, or three of them. §. 1.

But no drawback shall be allowed on the exportation of silver plate. 31 *G. 2. c.* 32. §. 9.

Importation.

By the 27 *G. 3. c.* 13, (to which we refer), certain duties are laid upon plate imported.

Affayers.

To prevent frauds in the true making of plate, it is enacted by the 12 & 13 *W. c.* 4, the 1 *Ann. st.* 1. c. 9, and the 13 *G. 3. c.* 52, that (besides the city of London) York, Exeter, Bristol, Chester, Norwich, Newcastle upon Tyne, Sheffield, and Birmingham shall be appointed for the assaying and marking of plate. And the goldsmiths, silversmiths, and plate-workers in the said places, shall be incorporated into a company, and choose wardens yearly.

Maker to enter his name and mark.

And by the said acts, every goldsmith, silversmith, and plate-worker, within the said places, and elsewhere, shall, before he exercises the said trade, enter his name, mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark than what is so entered, he shall forfeit double value; half to the king, and half to him who shall sue in any court of record in the county or place where the offence shall be committed.

Where there is not an assayer.

And every goldsmith, silversmith, and plate-worker, residing where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if the assayer shall find it to be of the fineness of the standard, he shall mark it. But if he shall make any plate (less in fineness than the standard) or put to sale (except such as from its smallness is not capable of the touch) before it shall be assayed and marked, he shall forfeit the same, or the value thereof.

And by the 24 *G. 3. c.* 53, Every working gold or silversmith shall send to the assay-office, all plate made by him to be touched or assayed, and he shall send with every parcel a written note, containing the day of the month and year, the name of the maker, and place of his abode, together with the species in such parcel, and number of each species, with the total weight of each parcel, and the duty payable for the same. §. 4.

Fineness by the standard.

And with respect to the fineness thereof by the standard, it is enacted by the 6 *G. c.* 11, that plate may be made, either according to the old standard (of 11 ounces and 2 penny weights fine silver in every pound troy); or according to the

the new standard (of 11 ounces and 10 penny weights) but differently marked. *f. 41.*

Plate of 11 ounces and 2 penny weights, shall be marked with the maker's mark, viz. the first letters of his christian and surname; the mark of the goldsmith's company in London, viz. the leopard's head, lion passant, and a distinct variable mark to denote the year; (or with the mark of the worker or maker, and with the mark appointed to be used by the assayers at the several respective places). *How marked.*

Plate of 11 ounces and 10 penny weights shall be marked with the maker's mark, viz. the first letters of his christian and surname; and the mark of the said company, viz. a lion's head erased, the figure of a woman called Britannia, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and that of one of the said cities or towns respectively.) *12 G. 2. c. 26. f. 5.*

And moreover by the 24 G. 3. c. 53, All plate shall be marked with a new mark of the king's head, besides the old marks, and the duties shall be paid previous to the marking thereof; that is to say, for gold plate, made in Great-Britain, 8s. an ounce, and silver plate 6d. an ounce, over and above all former duties. *Additional mark and duty by 24 G. 3.*

The said duties on all plate made in Great-Britain, to be under the management of the commissioners of stamps. *f. 2.*

And by the same statute, *f. 8.* No gold or silver plate shall be sold or exchanged till marked as aforesaid, on pain of 50*l.*

But (if no fraud shall appear) the duties shall be returned for all plate defaced for being coarser than the standard; and an allowance of one fifth part shall be made for goods sent to be assayed in a rough state. *f. 7, 10.*

And the said duties shall not extend to any jewellers' work, other than mourning rings, nor to any jointed night ear-rings of gold, or gold springs of lockets, or to goods excepted by 12 G. 2. c. 26. *Id. f. 9.*

Players and Playhouses.

BY the 10 G. 2. c. 28. *f. 1.* Every person who shall for hire, gain, or reward, act, or cause to be acted, any play, or other entertainment of the stage, or any part therein (having no legal settlement where he acts), without authority

Persons acting for gain, without authority, are deemed vagabonds.

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rity from the king or lord chamberlain, shall be deemed a rogue and vagabond within the 12 *Ann.* which said act of 12 *Ann.* was repealed, but re-enacted by the 17 G. 2. c. 5.

Or pay 50l.

Or he shall forfeit 50l; in which case he shall not also suffer as a vagrant. *f. 2.*

Plays, prologues, and epilogues, to be sent to the lord chamberlain.

And no person shall for hire, gain, or reward, act, or cause to be acted, any new play, or any part therein, or any new part added to an old play, or any prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain fourteen days before the acting, together with an account of the time when, and the place where it is intended to be acted, signed by one of the managers. *f. 3.*

Penalty.

And the lord chamberlain may prohibit the same at his discretion; and any person who shall act without such copy being sent, or against such prohibition, shall forfeit 50l. and the licence of the playhouse shall be void. *f. 4.*

And no person shall be authorised to act, except within the liberties of the city of *Westminster*, and where the king shall reside.

But by several special acts of parliament, playhouses are permitted to be erected in particular places.

Acting where liquor is sold.

If any play, or part thereof, shall be acted in any place where wine, ale, beer, or other liquors shall be sold, the same shall be deemed to be acted for gain, hire, and reward. 10 G. 2. c. 28. *f. 1.*

Penalties how recovered.

The pecuniary penalties under this act may be recovered in the courts at *Westminster*; or before two justices, on the oath of one witness, or confession, to be levied by distress; and for want of distress, the offender shall be committed to the house of correction, for any time not exceeding six months; to be kept to hard labour; or to the common gaol for any time not exceeding six months, without bail or mainprize. Persons who think themselves aggrieved, by order of the justices, may appeal to the next sessions. *f. 6.*

Appeal.

But licences may be granted by the justices, at their discretion, to perform plays, &c. under certain restrictions, by 28 G. 3.

But by the 28 G. 3. c. 30, Justices of the peace, at their general or quarter-sessions, may, at their discretion, grant a licence to any person making application to perform plays, &c. at any place within their jurisdiction, for any time not exceeding sixty days, to commence within the then next six months, and to be within such four months as shall be specified in the said licence, and so as there be only one licence in use at the same time within the jurisdiction so given, and so as such place be not within twenty miles of *London* or *Westminster*; or eight miles of any patent or licensed theatre; or within ten miles of the residence of his majesty, or of any place within the same jurisdiction, at which

which, within the six months preceding, a licence under this act shall have been had and exercised; or within fourteen miles of either of the universities; or within two miles of the outward limits of any town or place having peculiar jurisdiction; and so also as no licence under this act shall have been had and exercised at the same place within eight months then next preceding.

But no such licence shall be granted to be exercised within any city, town, or place, having peculiar jurisdiction, unless proof be made that the majority of the justices acting for such place, have, at a public meeting, signed their consent; or unless an express condition shall be therein inserted, that the same shall not be valid till approved by the majority of the justices of such place, at a meeting holden for that purpose. *f. 2.*

Cities and towns having peculiar jurisdiction.

Provided also, That no such licence shall be granted by the justices, within any city, town, or place, unless notice be given by the person applying for such licence, three weeks before such application, to the mayor, bailiff, or other chief civil officer of such place, of such intended application.

Three weeks notice to be given to the mayor, &c. by the person.

f. 3.

Poison. See HOMICIDE.

Polygamy. See BIGAMY.

Pond. See GAME.

Book.

THE 22 G. 3. c. 83, respecting the management of the poor by incorporated societies, contains many new regulations concerning the maintenance of the poor; but as that statute leaves it to the option of any parish or place, either to adopt those regulations or continue in the present mode, this title will contain the *Poor Law*, distinct from the statute of 22 G. 3. though that will be given at the conclusion; for that act expressly says, nothing therein shall extend to any parish, township, or place, which shall not agree to adopt the provisions therein made.

This extensive title will be arranged in the following order:

I. Appointment and Duty of Overseers.

II. Of Settlements.

VOL. III. (31.)

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III. Of

III. Of the Poor-Rate, and other Aids for their Relief.

IV. Of the Relief and Management of the Poor.

V. Of Removals.

VI. How Overseers are to account.

VII. Penalty of Overseers for neglecting their Duty.

VIII. How indemnified in the Performance of their Duty.

I. Appointment and Duty of Overseers.

Provision for
the poor by the
common law.

Origin and pro-
gress of the poor
law.

Origin of the
name and office
of overseers of
the poor.

How and when
appointed by the
43 Eliz.

Some have imagined, that the common law of England made no provision for the poor; but the Mirror shews the contrary; though how it was done does not appear. By *Foster, justice. Burr. Mansf. 450.*

The maintenance of the poor was anciently an ecclesiastical concern, and a fourth part of the tithes of every parish was set apart for that purpose. The minister, under the bishop, had the principal direction in the disposal thereof, assisted by the churchwardens and other principal inhabitants. A parochial settlement naturally ensued; and when the tithes of many of the parishes became appropriated to the monasteries, those societies had also some share in the relief of the poor, by reason of the said tithes and other donations for that purpose: the rest was made up by voluntary contributions.

By the 27 *H. 8. c. 25*, The churchwardens, or two other of every parish, were to make collections for the poor on *Sundays*. The 5 & 6 *Ed. 6. c. 2*, enacted, That the minister and churchwardens were annually to appoint two able persons or more, to be gatherers and collectors of alms for the poor. The 5 *Eliz. c. 3*, authorised the parishioners to choose the said collectors and gatherers for the poor. By the 14 *Eliz. c. 5*, The justices were to appoint collectors and governors of the poor. By the 39 *Eliz. c. 3*, The churchwardens of every parish, and four substantial householders there, being subsidy men, or, for want of subsidy men, four other substantial householders, to be nominated yearly in *Easter* week by two justices (1 2.) were to be called overseers of the poor of the same parish.

And by the 43 *Eliz. c. 2. s. 1*, The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish, to be nominated yearly,

yearly in *Easter* week, or within one month after *Easter*, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish.

And by the 13 & 14 C. 2. c. 12. s. 21, Whereas the inhabitants of the county of *Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland*, the bishoprick of *Durham, Cumberland, and Westmorland*, and many other counties in *England and Wales*, by reason of the largeness of the parishes within the same, have not or cannot reap the benefit of the act of the 43 *Eliz.* for relief of the poor; it is therefore enacted, That all and every the poor, needy, impotent, and lame persons within every township and village, within the several counties aforesaid, shall be maintained, kept, provided for, and set on work within the several and respective township and village wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen and appointed two or more overseers of the poor within every of the said respective townships and villages.

Regulations respecting certain counties,

Also by the 17 G. 2. c. 3. s. 15, In every township or place, where there are no churchwardens, the overseers alone may act in all respects, as churchwardens and overseers may do in other places, by virtue of this or any former act.

Where there are no churchwardens, the overseers may act.

And if any overseer shall die, or remove from the place for which he was appointed, or become insolvent before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead, who shall continue in office till new overseers are appointed. s. 3.

Overseer dying, removing, or becoming insolvent.

And by the 43 *Eliz.* c. 2. s. 10, If in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions.

Penalty on not appointing overseers.

Churchwardens were overseers of the poor, long before this statute of 43 *Eliz.* And hereby they need no formal appointment of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

All churchwardens are overseers.

Churchwardens of every parish] The justices of the peace, by the general words of the statute of 43 *Eliz.* c. 2. s. 1, have power to name overseers in all parishes; and in the case of *K. v. the Inhabitants of Rufford*, E. 8 G. the court

The term parish extends to all townships and villages, whether parochial or extra-parochial.

was of opinion, that it must extend as well to extra-parochial places as to all parishes in general. On a *mandamus*, directed to the justices of the peace of the county of *Nottingham*, reciting, That in the vill of *Rufford*, in the forest of *Sherwood*, there are divers substantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for, therefore it commands them to appoint overseers. They returned, that the vill of *Rufford* is part of no parish, but time out of mind has been extra-parochial, without church, chapel, or parochial rights, and that there never have been any overseers of the poor, and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of *Dolting v. Stokeland*, *H. 11 Ann.* that overseers of the poor might be appointed in an extra-parochial place, the court directed an argument, that the point might be solemnly determined. And, after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by *stat. 43 Eliz.* to be executed in parishes, were by *stat. 13 & 14 C. 2. c. 12*, extended to all townships and villages, whether parochial or extra-parochial, and consequently overseers might be appointed in this case; for which purpose a peremptory *mandamus* was awarded. *Str. 512.*

The statute of 13 & 14 C. 2. c. 12, directs overseers to be appointed in the several townships and villages within the several counties (and not within the several parishes in the said counties): therefore if it is a township or village, and such township or village is within the county, it seems not to be material whether it is within any parish or not.

But it must be a town or village.

But it must be a town or village, as in the following case: *E. 8 G. 2. Denham v. Dalham*. The question was, Whether *Southwold* park, being an extra-parochial place, consisting of two houses, and about three hundred acres of land, was such a place as to be liable to maintain its own poor. By the court: It is now a settled point, that the justices may appoint overseers in extra-parochial places, but such place must come under the notion of a town or village. It is difficult to define exactly what is a township or village: this must be left to the judgment of the court, upon the circumstances of the case stated. The notion of a village, according to the ancient law, is a tithing consisting of ten families, and the constable properly is the head of the tithing. By the 43 *Eliz.* there must in every place be at least two overseers; and where there are only two houses,

What shall be considered as a town or village.

the

the whole parish in such case must be perpetual overseers, and there is no person over whom they can have jurisdiction, nor any to chuse them but themselves. And it was adjudged, that two houses are not within the rule, so as to come within the notion of a township or village. And the like was said to have been adjudged in the case of *Belvoir*, *M. 2 G. 2.* where there were two houses, the duke of Rutland's and an alehouse. *Str. 1004. Burrow's Settlement Cases, 35.*

E. 10 G. 2. Stoke-Prior v. the inhabitants of the manor of Grafton. A poor person was removed to Grafton, and on appeal it was stated to be an *extra parochial* place, formerly a seat of the earl of Shrewsbury, consisting of a capital messuage, and three lodges in the park, but since converted into five houses and farms; and the sessions adjudged it a *vill*, and that it ought to maintain its own poor. This was moved to be quashed, upon the authority of the case of *Denham v. Dalham, E. 8 G. 2.* and a rule was made to shew cause. Afterwards, on an affidavit of service, the rule was made absolute, this not appearing to have the reputation of a *vill*. *Str. 1071.*

It must appear, upon the case stated, that a place either is legally and actually a *vill*, or at least that it is so reputed, to warrant an application for a *mandamus* to appoint overseers. *H. 23 G. 3. K. v. justices of Peterborough. Caldecott's Rep. 238.*

And in the case of *K.* and the inhabitants of *Welbeck, M. 14 G. 2.* A *mandamus* was granted, suggesting that there are several householders and farmers inhabiting and residing within the village of *Welbeck*, able to provide for the poor; and therefore commands the justices to appoint overseers of the poor. To this it is returned, that *Welbeck* is *extra-parochial*, and is not, nor ever was reputed to be a village or township, and therefore they cannot appoint any persons to be overseers. And, upon argument, this was held to be a good return. For, though it does not answer the supposal of the writ, as to there being several substantial householders and farmers, it answers the point in the *13 & 14 C. 2. c. 12.* by saying it is no *township* or *village*, or reputed as such: and it is to such places only that we can send a writ. *Str. 1143.*

Four, three, or two.] *M. 13 G. 2. K. v. Harman.* An appointment of five overseers was thought to exceed the direction of the statute; but as the *13 & 14 C. 2.* empowers the justices to appoint two or more in townships or villages, and it has been the custom in large parishes to

appoint more than *four*, the court will not quash the appointment. *Sess. Caf. 2. 148.*

But in the case of *K. v. Loxdale and others*, *H. 30 G. 2.* On a motion to quash an order of two justices, appointing *five overseers* for the *parish* of *St. Chad*, in *Shrewsbury*. The objection was, that the justices have no power to exceed the number of *four*, which is founded on the *43 Eliz. c. 2. s. 1.* on which a rule to shew cause was obtained. After hearing the arguments of the council on both sides, on this rule, the court gave their opinion. Lord *Mansfield*, after reading the report, and answering the several objections stated by the council, said, the appointment of more than four overseers was not warranted by the *43 Eliz.* on the true construction of that statute. *Denison, Foster, and Wilmot*, justices, gave their opinions at large, and concurred with the chief justice. By the court: Let the rule be made absolute for quashing the appointment and order. *Burr, Mansf. 445.*

Substantial householders there.] The appointment of overseers must style them *substantial householders*.

M. 20 G. 2. The case of the overseers of *Wobly*. There were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as *principal inhabitants*, instead of pursuing the words of the *43 Eliz. c. 2.* which are *substantial householders*; and the other, because it only called them *substantial householders*, without adding *there* or *in the parish*; and this too was not in the body of the appointment, as it ought to be. *Str. 1261.*

And in the case of *K. v. Moor*, *M. 2 W.* The court of King's Bench seemed to discountenance a parish in choosing a citizen of *London* overseer, who did not generally inhabit there, but only resided with them in the summer: no judgment, however, was given in this case.

It was held by *Parker*, chief justice, and *Powel*, justice, that a woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. *J. Parker* directed, that the parish should apply to the justices to have another nominated; and, if they refused, then to apply to the court for a *mandamus* the next term. *E. 10 Ann: 16 Viner, 415.* But it was determined otherwise in the following recent case:

A woman may be appointed overseer, the act only requiring that the person should be a sub-

E. 28 G. 3. K. v. Stubbs and others. *Alice Stubbs*, widow, *Thomas Miles*, and *Jonathan Keeling*, who were described to be *substantial householders*, were, on the 6th of *October 1787*, appointed overseers of the poor for the township of the monastery of *Ranton Abbey*, for one year next ensuing

ensuing the date thereof; on appeal to the sessions, this appointment was confirmed, subject to the opinion of this court, on the following case. The township of the monastery of *Ranton Abbey* is an extra-parochial place, containing three houses only, and about four or five hundred acres of land. Those three houses are respectively occupied by the appellants. Mrs. *Stubbs* lives in the *abbey-house*, and occupies the greatest part of the land within the township. The house occupied by *Miles* is a small house which he rents with something more than an acre of land belonging to it, and has lived in it two or three years with his wife and two children, and is poor, and a servant to Mrs. *Stubbs*. *Keeling* is a labourer, and poor; but the house in which he lives, with four or five rood of land belonging to it, is his own property. This case was argued by *Plumer*, *Sayer*, and *Legh*, in support of the appointment; and by *Leycester*, against it. After taking time to consider, *Ashhurst J.* delivered the opinion of the court. Three objections have been made; 1st, To the form of the appointment of overseers, it being made on the sixth of *October*, by which the overseers are appointed for one whole year from the date thereof. 2dly, That one of the persons appointed was a woman, who, as such, could not legally be appointed to such an office. 3dly, That the other two were not *substantial householders*, and therefore could not legally be appointed. As to the first objection, it was disposed of in the course of the argument, it being determined in the case of *K. v. Sparrow*, that such appointment is good. As to the second objection, we think the circumstances of one of the persons appointed being a woman, does not vitiate the appointment. The only qualification required by the 43 *Eliz.* is, that they should be *substantial householders*; it has no reference to sex. The only question then is, whether there is any thing in the nature of the office that should make a woman incompetent; and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified; as in the case of the office of high chamberlain, high constable, and marshal; and that of a common constable, which is both an office of trust, and likewise in a degree, judicial. So in the case of the office of sexton. As to the case in *Viner*, tit. *Poor*, 415, that is no conclusive authority. It is to be collected from the case, that there were other persons in the parish proper to serve; and if so, the court held the justices had not acted improperly in refusing to approve of a woman: where there are a sufficient number of men qualified to serve the office,

stantial householder, has no reference to sex.

they are certainly more proper; but that is not the case here, and therefore if there is no absolute incapacity, it is proper in this instance, from the necessity of the case. And there is no danger of making it a general practice: for, as the justices are invested with a discretionary power of approbation, it is not probable that they will approve of such an appointment, when there are other proper objects. As to the third objection, with respect to the other two persons appointed, we think there is no foundation for it in this instance: the word *substantial* is a relative term: if there were a great many opulent farmers, there the appointment of a day-labourer might be improper; but here there were no other persons to serve. They are both householders, with some land annexed to their houses, and one of them a proprietor. No better persons can be had than the place affords, and the want of them is no reason why the poor should not be provided for: therefore we are all of opinion, that the appointment ought to be allowed, and the order of sessions confirmed. 2 *Durnf. & East*, 395.

Militiamen exempted.

No person serving for himself as a private man in the militia shall, during the time of such service, be liable to serve as overseer of the poor. 2 *G. 3. c. 20*.

And surgeons of the corporation.

And freemen of the corporation of surgeons in *London* are exempted from the office of overseer of the poor. 18 *G. 2. c. 15*.

Whether a justice of the peace may be an overseer, depends on the discretion of the two justices who appoint, and the sessions upon appeal, to determine on the propriety of such appointment.

It seems not to have been determined, whether a justice of the peace may be appointed overseer; but it appears to be in a great measure discretionary in the justices appointing, and in the sessions upon an appeal, to determine whether he is a fit person or not: as in the case of *K. v. James Gayer, esquire*. Two justices appointed Mr. Gayer to be overseer of the poor of the parish of *Rockbear* in the county of *Devon*. The sessions, upon appeal, vacate the appointment, setting forth, that, it appearing to them that he was then an acting justice of the peace for the said county, and also a lieutenant of marines in his majesty's service on half pay, and that there are other sufficient substantial householders within the said parish for the doing such office, they therefore vacate and make void the appointment of the said *James Gayer*. On a rule to shew cause, the counsel on both sides went into a long argument. By lord *Mansfield*, chief justice: The sessions, upon an appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the justices had. They have given their opinion that Mr. Gayer was not a proper person to be appointed overseer. They were not obliged to give any reason for

for their opinion; because the legislature has intrusted them, upon an appeal, with the power or authority of appointing overseers. If they had given no reason, their order had undoubtedly been good. Mr. justice *Denison* concurred, and said, They were not obliged to give any reason at all; and, if it be only an imperfect one, we ought not to quash their orders: it is enough that they judged him an improper person to be overseer: and by the court unanimously, the order of sessions was confirmed, discharging Mr. *Gayer* from being overseer. *Burr. Mansf.* 245.

To be nominated yearly in Easter week.] In the case of *K. v. Clerkenwell*, E. 13 G. The court seemed to think an appointment of overseers on a Sunday to be a good appointment; for it may be in *Easter week*, and this is the first day of the week. But the case was determined upon another point, because they were not said to be substantial householders. *Foley*, 4.

But in the case of *K. v. Butler*, E. 8 G. 3, Lord *Mansfield* said, That, notwithstanding the case of *K. v. Clerkenwell*, I should think that an appointment on a Sunday is *prima facie* clandestine and void. *Blackst. Rep.* 649.

Or within one month after Easter.] *H. 13 G. 2. K. v. Sparrow*. Upon a rule to shew cause why the appointment of overseers for the town of *Ipswich* should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, had appointed overseers, but that it was not within the month of *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee*, chief justice, who delivered the opinion of the court: As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, as it would subject the parish to very great inconveniencies for a thing which is not in their power to prevent. To interpret the act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5/; but that does not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. 2 Sess. Cas. 140. Sir. 1123.

The appointing overseers after time limited shall not be void, but the justices incur a penalty.

Two or more justices.] The sessions have no original jurisdiction in the appointment of overseers. 1 *Seff. Cas.* 260. Because the statute gives a power of appealing to the sessions against the order of appointment; which power would by this means be taken away.

Parish or division.] In the above-mentioned case of *K. v. Sparrow, M.* 13 G. 2, an appointment of overseers, not mentioning the justices to be of the division, was held to be good; for the words in this case are only directory. 2 *Seff. Cas.* 140.

By some of the ancient statutes now in force, particularly that of the 22 H. 8. c. 12, the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor: and thence arose the clause in the subsequent statutes, that the justices *of the division* were to act in such and such a manner. But as there is now no law which requires them to *divide* for the aforesaid purposes, there is not properly any *division* in the sense which the statutes intended; it cannot therefore be necessary to set forth now, that the justices are *in or near the division*. 3 *Burn*, 320.

Many other counties in England and Wales] See the statute of 13 and 14 C. 2. It was held, (in the case of *Skilington and Norton, T.* 27. c. 2.) that this statute does not extend to any other counties than those expressly named. (2 *Lev.* 142.) But afterwards, in the case of *Dolting and Stokeland*, it was held by the whole court, that, by reason of the words, "*and many other counties in England and Wales*," the act is general, and extends to other counties than those named in the act, or it could not extend to any one county in *Wales*. *Foley*, 98.

It was also adjudged, in the case of *Clifton and Churcham*, (H. 12 G. 2.) that the act extends to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And *Lee*, chief justice, said, that it was so determined, after great debate and consideration, in the above-mentioned case of *Dolting and Stokeland*; which case has been ever since adhered to. *Andrews*, 314.

By reason of the largeness of the parishes cannot reap the benefit of the act of 43 Eliz.] But, to entitle the parishes applying for relief or redress under this clause, it must be shewn that they are such parishes as cannot receive the benefit of 43 *Eliz.* without the aid of 13 and 14 C. 2. As in the case of *Peart and Westgarth*, H. 5 G. 3. *Burr.* And the

the king against the justices of *Middlesex*, 27 and 28 G. 2. *Bolt*, 17.

And in the case of *K. and the inhabitants of Uttoxeter, E.* 20 G. 3. On a rule to shew cause, why an order of sessions, confirming separate appointments of overseers for the poor for the township of *Uttoxeter* and three other divisions of the parish of *Uttoxeter* in *Staffordshire*, should not be quashed, it appeared from the special case stated by the sessions, that the parish of *Uttoxeter* is five miles in length and five in breadth, and contains five several townships: that the said townships are one intire parish: that, ever since 1643, they have had separate appointments of overseers in the several townships within the said parish; but that, till 1730, they jointly relieved and maintained the poor throughout the parish; but, since that time, they have generally maintained them separately in the several divisions. In support of the order of sessions, it was argued, that it appears from the facts found by the special case, that the parish has not had the benefit of the statute of 43 *Eliz.* since more than four overseers had been appointed ever since 1643, and that statute does not authorize the appointing more than four. Mr. justice *Buller* said, Ought it not to have been stated in the case, as a substantive fact, that the parish had not had the benefit of the 43d of *Elizabeth*? To which it was answered, That if enough is clearly stated, to shew it to be the truth, the court will infer it without an express finding, for the purpose of supporting the order. The rule, with regard to orders of sessions, is the reverse of what obtains in the case of convictions. The court presumes against convictions, unless facts appear sufficient to support them; but an order of sessions is presumed to be right, unless the facts stated prove it to be wrong. On the other hand, in support of the rule for quashing the orders, it was insisted, that the case of *Peart* and *Westgarth* is directly in point, and that it is clearly established by that case, that unless the sessions expressly state that the parish has not had the benefit of 43 *Eliz.* the court will presume that it has: that the statute of C. 2. mentions largeness as the only reason for a division; and the case of *Peart* and *Westgarth* shews that the parish of *Uttoxeter* is not too large; for there, the parish of *Stanhope* appeared to be twenty miles long, and yet it was not to be divided, and *Uttoxeter* parish is only five miles. Lord *Mansfield* stopped the other counsel on the same side, and said, The case of *Peart* and *Westgarth* decides the question. It must appear to the court that there was a disability to reap the benefit of the statute of 43 *Eliz.* Here the contrary appears. Though there

there were separate overseers, there was a joint maintenance till 1730. The acquiescence of the parish for a number of years will not alter the law. The case of *Peart and Westgarth* was well considered. The court thought the statute of C. 2. proceeded upon a bad principle of policy; for that large districts, for the purposes of maintaining the poor, are much to be preferred to small ones. And the order of sessions, and the four appointments of overseers, were quashed. *Caldecott's Rep.* 84.

E. 20 G. 3. K. v. the inhabitants of Beeding. The same point came in question in this case; when the court recognised the doctrine laid down in the case of *Peart and Westgarth*, as having fully settled the matter. *Caldecott's Rep.* 90.

A township, having separate overseers must be considered as a parish with respect to removals,

Within the several and respective township and village.] A township, where a parish consists of many, who maintain their respective poor, and have separate overseers, must be considered as a parish, with respect to a removal to it. As in the following case: *T. 10 G. 3. Kirkby Stephen v. Wharton.* *Kirkby Stephen* is a large parish, consisting of ten different townships, who maintain their respective poor, and have separate overseers. The township of *Kirkby Stephen* and that of *Wharton* are two of these ten townships. The pauper *William Green* was removed from *Newport* by an original order, directed to the officers of the parish of *Kirkby Stephen*, and adjudging his settlement to be in that parish, and removing him to that parish; and was brought, together with this order, by the overseers of *Newport*, and delivered to the overseer of the township of *Kirkby Stephen*. But neither the parish of *Kirkby Stephen*, nor the township of *Kirkby Stephen*, appealed from the order; and the pauper remained in *Kirkby Stephen*, and was maintained by a sister in the township of *Kirkby Stephen*, for near a year and an half; when, his sister dying, he asked relief of the township of *Kirkby Stephen*; who thereupon got him removed, by an order of two justices, to the township of *Wharton*. Which order was quashed upon appeal, subject to the opinion of the court of King's Bench, upon the above-recited state of the case. It was moved to quash the order of sessions, and urged that the township of *Kirkby Stephen* was not precluded from disputing the settlement with another township in the same parish. The first order of the two justices removes from the parish of *Newport* to the parish of *Kirkby Stephen*; and the parish, it is true, have not appealed against it. But the parish at large consists of several townships; which several townships are not affected, as between one and another

of these particular townships, by the non-appealing of the parish at large. That, if they had appealed, the determination must have been against them; for the order removed the pauper to the parish of *Kirkby Stephen*; and it is agreed on all hands, that his settlement was within the parish. — On the other hand it was insisted, that the township of *Kirkby Stephen* was bound, and concluded by the order of removal from *Newport* to *Kirkby Stephen*, unappealed from. The original order calls *Kirkby Stephen* a parish, though it is only a township; but that mistake will not vary the law. They ought to have appealed: and, upon an appeal, they might have availed themselves of that mistake; or of the merits, if they had any. But, not having appealed, they are concluded against all the world. By lord *Mansfield* and the court: The original order, made for the removal from *Newport* to the parish of *Kirkby Stephen*, must mean the township of *Kirkby Stephen*. The township was a parish for this purpose, of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships, to which they respectively belong. The township of *Kirkby Stephen* ought, in this case, to have appealed. They could not get rid of this order but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices, upon the whole truth being disclosed, the pauper might, in the end of the enquiry, have been sent to *Wharion*. — And the order of sessions was affirmed. *Burr. Set. Cas. 644.*

If in any place there shall be no such nomination as is before appointed (43 Eliz. c. 2. s. 10,) that is, in Easter week, or within one month after Easter.

Every justice of the division shall forfeit 5l.] This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise: but now the justices at large are all equally concerned; and therefore it seems, that this penalty cannot now be levied on any particular justice. But if in any place no overseer shall be appointed, a *mandamus* will go to the justices at large, to compel them to appoint.

And that the justices of the peace may know who are fit to be appointed overseers, it is usual and requisite for them to issue their precepts in some such form as here followeth;

Warrant for
returning lists
of overseers.

Surry. { To Charles Thomson gentleman, high constable of
B. Ward, within the said county.

Wt

Book. (Overseers.)

We two of his majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby require you forthwith upon your receipt hereof, to issue your warrants to all the petty constables within your said ward, in the form or to the effect, according as upon this our warrant is indorsed: Given under our hands and seals the day of

Form of the high constable's warrant to the petty constable.

Surry —
B — Ward } To the constable of

By virtue of a precept from two of his majesty's justices of the peace in and for the said county (one whereof is of the quorum) to me directed, you are hereby required immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at in in the said county, on the day of at the hour of in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand the day of in the year of our Lord

Charles Thompson high constable.

Form of an appointment of overseers.

And the form of an appointment of overseers, clear of the objections above noticed, may be as follows:

Surry. We two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby nominate and appoint A. B. and C. D. being substantial householders of the parish [or, township] of in the said county, to be overseers of the poor of the said parish [or, township] according to the direction of the statute in that case made and provided. Given under our hands and seals (within a month after Easter.)

But by a remedial clause, in the 17 G. 2. c. 38, it is enacted, That the distress for the poor rate shall not be deemed unlawful, nor the party making it a trespasser for any defect or want of form, in the warrant for the appointment of overseers. s. 8.

If any person shall find himself aggrieved, by any act done by the said justices, he may appeal to the general quarter-sessions,

sessions, whose order therein shall bind all parties. 43 *El. c.* 2. *f. 6.*

This clause leaves the appeal at large, and does not restrain it to the next sessions: but the 17 *G. 2. c. 38*, directs the appeal to be to the next sessions, but not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together; and then the sense of the statute of the 17 *G. 2.* will be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions; but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And indeed many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud, if they might be safe by concealing such practices till the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 *G. 2.*

General duty of overseers.

And by the 17 *G. 2. c. 38*, The overseers, thus appointed, and taking on them the office, shall, within fourteen days, receive the books of assessments and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. *f. 1, 11, 13.*

And by the 43 *Eliz. c. 2. c. 38*, they shall take order from time to time, with the consent of two or more of such justices as aforesaid, for setting to work the children of such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by. *f. 1.*

Which said churchwardens and overseers so to be nominated, or such of them as shall not be let, by sickness or other just excuse, to be allowed by two such justices, shall meet together at least once every month, in the church of the said parish, on *Sunday* in the afternoon, after divine service, there to consider of some good course to be taken, and order it to be set down in the premises: upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting for the purpose aforesaid, or being negligent in their office, shall forfeit for every default 20s. to the poor:

to

to be levied by some or one of the churchwardens and overseers, by warrant from two such justices by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. Provided always, that if any person shall find himself aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter-sessions, whose order therein shall bind all parties. *Id.* s. 2, 6, 11.

But the penalty for not meeting in the church shall not be incurred by the overseers of extra-parochial places; because they have no church to meet in. *8 Mod. E. 7 G.*

Overseers indictable for refusing to take the office.

For a person to refuse to take upon him the office of overseer, has been held to be an offence indictable; for, though the statute appoints a penalty, that penalty is not for refusing to take the office, but for neglect of duty in that office; and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. *Str.* 1146.

II. Of Settlements

The statutes relating to the poor have been very gradual in their progress. The 12 R. 2. c. 7, enacted, That the poor were to repair to the places where they were *born*, in order to be maintained. The 11 H. 7, directed them to repair to the place where they last *dwelled*, or were *best known*, or were born. By the 19 H. 7. c. 12, they were to go to where they were *born*, or made *last* their abode for the space of *three years*. By the 1 Ed. 6. c. 3, this was explained to be where they had been most *conversant* for the space of three years. The 1 Jac. c. 7, enacted, That they should be sent to the place of their dwelling, if they had any; if not, to the place where they *last dwelt* for the space of *one year*: if that could not be known, then to the place of their birth. This last continued till the statute of the 13 & 14 C. 2. was promulgated, which is the foundation of all the settlements as they stand at this day. The arrangement of this extensive subdivision, of a very extensive tide, is as follows:

1. Persons who have no Settlements.
2. Of Certificates.
3. Settlement by Birth of legitimate Children.
4. Settlement by Birth of Bastards.

5. Set-

5. Settlement with the Parents.
6. Settlement by Apprenticeship.
7. Settlement by Service.
8. Settlement by continuing forty Days after Notice.
9. Settlement by Marriage.
10. Settlement by Estate.
11. Settlement by renting ten Pounds a Year.
12. Settlement by paying Parish Rates.
13. Settlement by serving a Parish Office.

1. Persons who have no Settlement.

By the 13 & 14 C. 2, (an act on which more cases are said to have been adjudged than on any other in the statute book), Whereas the number of poor within *England* and *Wales*, is very great and burthenfome; and whereas by reason of some defects of the law, poor people are not restrained from going from one parish to another; it is enacted, That within forty days after any such persons shall come to settle in any tenement under ten pounds a year, two justices (1 Q.) may remove them to the place where they were last legally settled. s. 1.

By the words, *the poor within England and Wales*, it may seem that other poor are not within the regulation of this statute. But if this statute extends only to the poor of *England* and *Wales*, it must certainly follow, that a *Scotchman* or *Irishman* can gain no settlement in *England* by virtue of this statute; and, if not by this, he cannot by any of the subsequent statutes concerning settlements; for they are all relative thereto, and depending thereon. That is to say, in these circumstances, a *Scotchman* or *Irishman* can gain no settlement in *England*, neither by renting ten pounds a year, nor by continuing forty days after notice, nor by apprenticeship, nor by service, nor by paying parish rates, nor by serving a parish office. The practice, however, seems to be universally allowed against this opinion.

But with respect to foreigners, it was adjudged as follows, in the case of *Conrad, T. 6 W.* A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were sent back by order of two justices: but, by the court; The landing makes no settlement, and the order was quashed. And *Eyre*, justice, (*Holt* chief-justice being absent) seemed to be of opinion, that this is a case omitted out of the statute. *Comb. 287.*

Within forty days] But it is enacted by the 1 Jac. 2, That such forty days continuance shall not make a settlement, but from the time of delivering notice in writing; and

by the 3 *W.* it must be from the time of the publication of such notice in the church: but it has always been understood, that a person who is not removeable need not give such notice; and that a person continuing forty days *unremoveable*, and a person not removed for forty days after such notice given and published, shall equally gain a settlement. The following case was tried between the parishes of *St. Giles* and *St. Margaret, E. 2 G.* An *Englishwoman* was married to a foreigner, who had no settlement in *England*; the husband continued forty days in a parish *unremoveable*, because there was no place to which he could be removed; and it was urged that the wife continuing with him, as part of his family for forty days *unremoveable*, she thereby gained a settlement. But by *Holt*, chief-justice, Where a person stays forty days in a place whence he has a right not to be removed, that gains a settlement; but it is otherwise, where he only stays in a place, because they know not where to remove him. And in this case, he said, he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. *1. Seff. Cas. 97.*

2. Of Certificates.

By the 13 & 14 *C. 2. c. 12. s. 1*, Power is given, upon complaint of the churchwardens or overseers, within forty days after a person is come to settle on any tenement under 10*l.* a year, to two justices (12.) to remove such person to the place where he was last legally settled, unless he give sufficient security for discharge of the parish, to be allowed by the said justices.

Origin of certificates by statute.

The 8 & 9 *W. c. 30*, states, That, forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it therefore enacts, That if any person who shall come into any parish or place there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, township, or place, or the major part of them, or of the overseers where there are no churchwardens, to be attested by two or more credible witnesses: thereby owning and acknowledging the person mentioned in the said certificate to be an inhabitant legally settled in that parish, township, or place: every such certificate, having been allowed of and subscribed by two justices

of

of the place from whence the certificate shall come, shall oblige the said parish or place, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: and then and not before, it shall be lawful for such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought. /s. 1.

And by the 9 and 10 W. c. 11, No person coming into any parish by such certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and *bona fide* take a lease of a tenement of the yearly value of 10*l.* or shall execute some annual office in such parish, being legally placed in such office.

Also by the 12 Ann. st. 1. c. 18. /s. 2, If any person shall be an apprentice bound by indenture, or be a hired servant, to any person who came into or shall reside in any parish, township, or place, by means or licence of such certificate, and not afterwards having gained a legal settlement there; such apprentice or servant shall not be adjudged thereby to have any settlement in such parish, township, or place; but shall have his settlement in such place as if he had not been an apprentice or servant as aforesaid.

And the 3 G.2. c. 29, enacts, That the witnesses who attest the execution of the certificate by the churchwardens or overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses did see the churchwardens and overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate; and that the names of the witnesses attesting the said certificate, are of their own proper hand-writing: which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be received as evidence, without other proof thereof. /s. 8.

The form of which certificate may be as follows:

To the churchwardens and overseers of the poor of the parish
of Kingston, in the county of Surry.

We the churchwardens and overseers of the poor of the
parish of Richmond, in the county of Surry, do hereby cer-
X 2 ify

tify, own and acknowledge, that A. B. yeoman, is an inhabitant legally settled in our parish of Richmond aforesaid. In witness whereof we have herunto set our hands and seals, the day of in the year of our lord

Attested by	A. B.	} Churchwardens.
A. B.	C. D.	
C. D.	E. F.	} Overseers of the poor.
	G. H.	

We E. B. and S. T. esquires, two of his majesty's justices of the peace in and for the said county of Surry, do allow of the above written certificate. And we do also certify, that A. D. one of the witnesses who attested the same, hath this day made oath before us the said justices, that the said A. D. did see the churchwardens and overseers of the poor of the parish of Richmond aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of A. B. and C. D. who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this day of

A parish cannot be compelled to grant a certificate, as in the case of *K. and St. Ives*, *H. 3 G. 2.* A mandamus was moved for, to compel the churchwardens and overseers to sign a certificate; but the court rejected the motion as a very strange attempt. *2 Sess. C. 128.*

A parish is not obliged to grant a certificate.

An improper direction will not vitiate a certificate. The statute does not require any particular direction, and therefore is it is equally effectual, whether addressed to any particular place, or addressed in general terms, or not addressed at all, provided it contains an acknowledgment of the settlement of the persons certified for. As in the case of *St. Nicholas in Harwich and Woolverstone*, *H. 15. G. 2.* On a rule to shew cause why an order of two justices made for the removal of *T. P.* his wife, and six children, from *Woolverstone* in *Suffolk*, to *St. Nicholas in Harwich* in *Essex*, and which was confirmed by an order of sessions, should not be quashed. On shewing cause on this rule, after hearing counsel on both sides, the court gave their opinion. *Chapple*, justice; As to the validity of the certificate, there are two objections. The justices say, that they believe it to be ineffectual to the parish of *St. Nicholas*; they state that there is but one parish in *Harwich*, viz. *St. Nicholas*, and the certificate is addressed to the parish of *Harwich near Dover Court*, whereas there is no such parish. I do not think any direction at all to be necessary, and a misdirection is as a void direction; besides, if it was necessary, I am doubtful if the

the mistake would make it bad. As to the delivery of the certificate, it was given to an inhabitant, though it does not appear that he was a *parish officer*; if it had been a removal to *Harwich*, a delivery to the officer had been necessary; but the statute does not make it a condition that the certificate shall be delivered to the parish officers: therefore he held, that the man had not gained a settlement in *Harwich*, and was of opinion that the order ought to be quashed. *Wright*, justice, concurred; and it was admitted by the court that stat. 8 & 9 *W. c.* 30. does not require any direction of a certificate, and that the same is good without; and in this case the parish of *Woolverstone* has by their certificate acknowledged him to be an inhabitant legally settled in their parish, and they are thereby bound against all the world. By the court: Let the rule be made absolute for quashing both orders. 1 *Burr. S. C.* 171. *Str.* 1163.

By the 8 & 9 *W. c.* 30, A certificate must be under the hands and seals of the churchwardens and overseers, or the major part of them. In the case of *St. Michael's and Tamworth*, *E.* 14 *G.* 3, the father of the pauper went from the parish of *St. Michael*, to reside in *Tamworth*, and brought with him a paper purporting to be a certificate; but that certificate was only signed by four persons, though the parish of *St. Michael* had ten churchwardens and overseers, viz. six of the former and four of the latter, and the certificate was deemed insufficient. *Burr. Settl. Cas.* 770.

A certificate must be signed by the parish officers and justices, or the major part of them.

H. 8 *G.* 3. *K. v. The Inhabitants of Wooton, St. Lawrence.* On a rule to shew cause why an order made by two justices for the removal of *T. P.* his wife, and six children, viz. *M. T. H. J. G.* and *J.* from *Wooton St. Lawrence* to *Mitcheldever* in *Hants*, and which on an appeal to the sessions was quashed as to *M.* and *T.* two of the said children for insufficiency, there being no adjudication therein as to their settlement, should not be confirmed as to the said two children. On shewing cause on this rule, the counsel against quashing the order of sessions gave up the certificate as regularly executed under the certificate acts, but alledged the same to be good at common law before stat. 8 & 9 *W.* as it was a full acknowledgment that the pauper was their parishioner. Lord *Mansfield*: A certificate cannot conclude the parish unless properly signed. The certificate act specifies certain checks and guards on certificates. The justices are not obliged ministerially to allow, and sign a certificate: they are not bound at all events to allow and sign it: they have a discretionary power to allow it, or not to allow it.

A certificate cannot conclude the parish unless properly signed.

it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards specified in stat. 8 & 9 *W. c.* 30. This certificate wants them, therefore it is no certificate within that statute; and if so, it cannot conclude the parish. *Yates and Aston*, justices, agreed with the chief-justice, and said it must be a certificate pursuant to the statute, or it could not conclude the parish that gave it. By the court: Let the order of sessions be quashed, except as to the two children, *M.* and *T.* 2 *Bur. Sett. Cas.* 581.

In the case of *New Windsor* and *White Waltham*, *T. 5 G.* The pauper being settled in *White Waltham*, where he had lived two years with a woman who was reputed his wife, went with a certificate from *White Waltham*, owning them as husband and wife, into the parish of *New Windsor*, where they had six children. The man dying, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled in *New Windsor* where they were born. But by the court: The certificate is conclusive to the parish of *White Waltham*, and they are not to be admitted to dispute the validity of the marriage; and therefore the six children, being actually chargeable to *New Windsor*, must be sent to *White Waltham*. *Str.* 186.

Certificate of a prior date, though not delivered till after the removal of the pauper, is conclusive upon a removal by the parish granting it.

M. 20 G. 3. K. v. Inhabitants of Buckingham. Two justices remove *Mary Swift*, widow, from the parish of *Fringsford*, in the county of *Oxford*, to the parish of *Buckingham*, in the county of *Bucks*. The sessions on appeal confirm this order, and state the following case: That in 1737, *John Leicester*, the pauper's father, and herself, jointly purchased a tenement, being copyhold of inheritance, situate at *Gawcott*, in the parish of *Buckingham*, for 14*l.* or 15*l.* part of which consideration money was paid by the said *John Leicester*, and the remaining part by the present pauper, and the premises were surrendered to the use of the said *John Leicester*, for his life, with remainder to the pauper in fee: that the said *John Leicester* was admitted: that the pauper some few years after this purchase, and in her said father's lifetime, intermarried with one *Robert Swift*, who was settled in the parish of *Fringsford*: that five or six years after such marriage, the said *John Leicester*, her father, died; whereupon the pauper and her husband came to and resided upon these premises, and the pauper alone was admitted (according to the custom of the manor) in 1745: that they lived there chiefly to the time of her husband's death, which hap-

happened about four years ago: that on the 14th of June, 1776, the parish of *Fringford* granted a certificate to the pauper, under the hands and seals of the churchwardens and overseers there, and attested by two justices, residing in or near the said parish, &c. The case then proceeded to state all these acts, which appeared to be regular, together with the certificate, *in hæc verba*: That the certificate was delivered to the pauper and kept in her possession, not delivered to the parish of *Buckingham* till after the removal of the pauper, under the order above stated: that the pauper, after the granting of the certificate, and before the removal, resided upon the premises upwards of forty days upon the whole. Upon the hearing of this appeal, this certificate was offered to the court as conclusive evidence against *Fringford*, so as to prevent their setting up any settlement obtained in the parish of *Buckingham*, previous to such certificate granted: but the court are of opinion that the certificate under these circumstances is not a good certificate, or such an one as they could receive as conclusive evidence: and that the pauper has gained a settlement in the parish of *Buckingham*, by such estate and residence as is before stated, and confirm the said order of removal. *Wooddeson* had moved to quash these orders, on the ground, that the detention from the appellants by the pauper, till after his removal, of the certificate, granted by the parish removing, and of which that parish at the time of the removal could not be ignorant, would not intitle them to avoid the effect of it, when produced at the trial against them; but that they were thereby concluded: and no cause being now shewn: By the court: Rule absolute, and both orders quashed. *Caldecott's Rep.* 65.

E. 15 G. 2. Sherborne v. Thornford. Humphrey Eyres, A certificate father of *George Eyres*, the pauper, came by certificate from *Thornford* into the parish of *Sherborne*, with his wife and children born after it is granted. family; by which certificate, the said *Humphrey* and his wife and family were owned to be legal inhabitants of *Thornford*. In about two years afterwards, his wife died, and soon after he married a second wife, by whom he had the pauper *George Eyres*. Which said *George*, when about sixteen years of age, was hired for a year, and served that year in the said parish of *Sherborne*. The principal question was, Whether the son of a certificate person, born after the certificate, can gain a settlement otherwise than a certificate person himself can. And by the court, The 8 & 9 *W. c. 30.* extends not only to the certificate man himself, but also to all his family and all his children, whether born before or af-

ter the certificate. And the 9 & 10 W. c. 11, declares what shall gain them a settlement in that parish to which they come by certificate, and restrains it to two methods only, which it specifies; and service is neither of these two methods to which it is restrained. *Burt. Settl. Cas.* 182.

And in the case of *Bray and Shottesbrooke*, H. 19 G. 2. The father of the pauper *James Gould* came by certificate from *Shottesbrooke* to *Bray*; after which, the said pauper was born, and at the age of twenty years was hired for a year, and served the same in *Bray*. It was objected, that the son, being born after his father came from *Shottesbrooke* to *Bray*, cannot be considered within the words of the act as coming into the parish by certificate, and being twenty years of age he ought not to be considered as part of his father's family and dependent upon his settlement. But by the court, The case of *Sherborne and Thornford* is in point, and was settled upon good reason; because as the son has the advantage of the certificate, and cannot be removed until actually chargeable, so he ought on the other hand to be bound by the terms of it. *Bur. Settl. Cas.* 259.

And in the similar case of *Buckingham and Maid's Moreton*, H. 25 G. 2, It was thus adjudged, as a point clearly determined and settled. *Bur. Settl. Cas.* 314.

A certificate is conclusive against the parish certifying, as to all other parishes.

In the case of *Honyton and St. Mary Axe*. M. 9 Ann, The question was, Whether the parish granting the certificate was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? *Parker Ch. J.* delivered the opinion of the court: Before the statute, a certificate was only an evidence of a private undertaking between the parties, in the nature of a contract; but now it is a solemn acknowledgment, like the conusance of a fine; and thereby the party is owned to be legally settled there: and as all other parishes on this certificate are bound to receive him, so the parish which certifies is concluded as to all other parishes. 2 *Sulk.* 535. *Foley*, 177.

T. 19 G. 2. *Headcorn v. Maidstone*. The parish of *Maidstone* gave a certificate to *Headcorn*, acknowledging *Richard Burden* and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. It was afterwards found, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which, *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded that it would be hard that they should be obliged to take two wives, and different children.

children. But by the court, The parish that certifies must take care for whom they certify: and the certificate is conclusive. The parish of *Maidstone* have by this certificate expressly acknowledged the said *Mary* to be their legal inhabitant; and the parish of *Headcorn* were thereupon bound to receive her. Therefore when she becomes chargeable, the parish of *Maidstone* are obliged to provide for her and her children by *Burden*. *Maidstone* say they were deceived: but it was their own fault or folly if they were so; and they deceived *Headcorn*: Therefore they ought to suffer, and not *Headcorn*. 2 Sess 200. Str. 1233. Burr. Settl. Cas. 253.

And in the case of *Tostock* and *Islame*, H. 13 G. 3, Where *Islame* granted a certificate, acknowledging *Edward German*, *Elizabeth* his wife, and *Edward* their son to be their parishioners: Though this certificate was improperly obtained, by suppressing a fact that *Edward* the son was a bastard, born before marriage; yet, as it did not appear that the parish officers had recommended to the father to get a certificate for the son, nor that he to whom the certificate was granted desired the son to be included in it, the certificate was held, on the authority of the case of *Headcorn v. Maidstone*, to be conclusive. Burr. Settl. Cas. 737.

T. 29 & 30 G. 2, *Taunton St. Mary Magdalen*, and *Taunton St. James's*. *Robert Bagg*, grandfather of the pauper, came with a certificate from *Taunton St. James's* to *Taunton St. Mary Magdalen's*. He afterwards returned to the parish of *Taunton St. James's*, and there had a son, *Robert*, the father of the present pauper. Afterwards *Robert*, the pauper's father, married in *Taunton St. James's*, and went and lived in a house there, with his wife and family, apart from his father; and had issue *Robert*, the pauper, born in *Taunton St. James's*. *Robert* the grandfather died in *Taunton St. James's*; then *Robert* the father died; and *Robert* the pauper was bound an apprentice by the parish of *Taunton St. James's*, into the parish of *Taunton St. Mary Magdalen*; and there served his apprenticeship. It was urged, that, by virtue of the certificate given with his grandfather to the said parish of *Taunton St. Mary Magdalen*, the said apprentice gained no settlement in that parish, but continued settled in the parish of *Taunton St. James's*, which had given the certificate. But the court delivered their opinion, that the certificate itself was of no force, at the time of the grandson's being put apprentice in *Taunton St. Mary Magdalen's*, but was then totally at an end. For in so long a course of time, which was fifty-four years after granting

When a certificate shall be considered as deserted, at an end, or satisfied.

granting the certificate, and after such a desertion, it was reasonable to conclude there was an end of it. It was absolutely waived and deserted. And the father and grandfather of this pauper could not have gone to *St. Mary Magdalen's* again without a new certificate. And in the present case, the certificate being at an end, the apprenticeship of *Robert Bagg*, the pauper, will have just the same effect as if no such certificate had ever been given, or were any ingredient in the case: That is to say, the apprentice is settled in *Taunton St. Mary Magdalen's*. *Burr. Settl. Cas.* 402.

In deciding whether a certificate is abandoned, the court will regard the intention of the parties, together with the other circumstances. What particular length of time amounts to an abandonment is not determined.

T. 20 G. 3. K. v. Inhabitants of Frampton upon Severne. Two justices remove *Elizabeth*, the wife of *Samuel Minett*, and their child, from the parish of *Frampton upon Severne* to the parish of *Fretherne*, in the same county. The sessions on appeal quash the order, and state the following case: That in 1751, *Fretherne* parish granted a certificate to the parish of *Frampton upon Severne*, thereby owing *Job Minett*, and *Ann* his wife, to be settled in *Fretherne*; under which certificate *Minett* and his wife lived in *Frampton* till the latter end of 1753, or the beginning of 1754, when they voluntarily returned to *Fretherne*, his place of settlement, and had afterwards a son, named *Samuel*, born in *Fretherne*, in 1754. The father lived in *Fretherne* for seventeen or eighteen years; when having a relation in *Frampton* dead, he went by himself (his wife being dead) to *Frampton* to possess himself of the effects, and there remained about six months: when, being taken ill, he was by the parish of *Fretherne* recommended to *Gloucester* infirmary, and there died. But before the father went to *Frampton*, to take possession of his relation's effects, *Samuel*, the son, was hired for a year to *Robert Very*, in *Frampton*, and lived with him for two or three years. On going out of *Very's* service, *Samuel* was hired again in *Frampton*, to *Richard Clutterbuck*, Esq. and lived there for two or three years, and till after his father died. *Samuel*, the son, afterwards married *Elizabeth*, his wife, and had by her one child, the pauper. *Dunning* shewed cause in support of the order of sessions; and insisted, that at the time of the first hiring of *Samuel*, the son, the certificate was not in point of law subsisting: that there were various modes by which a certificate might be discharged: that a removal was undoubtedly one: that it might also by a waiver or desertion; as in the case of the *K. v. the Inhabitants of Taunton St. Mary Magdalen*. *Howorth* and *Clyfford*, in support of the rule to quash the order of sessions, insisted, that the only question was, Whether,

Whether, as to the operation of a certificate in point of time, there was any statute of limitations, or rule of law analogous thereto? that there was only one case, the case cited, in which any thing like that doctrine had been even hinted at: that it was no more than hinted at: that its authority did not stand on principle, and that it was a resolution, when the court was not full; and did not by any means rest on that point singly, but upon a variety and combination of circumstances: that the authority of this case had also been considerably shaken by a subsequent determination, that of the *K. v. the Inhabitants of Spotland*; which proved that a voluntary removal merely would not affect a certificate; which could only be avoided by the several modes pointed out in the act, or by such determinations as were the clear and undoubted construction of it: that, therefore, unless there were some act that amounted to a discharge, or an abandonment of the certificate, no length of time, or succession of generations, could, of themselves, avoid it: that a certificate, which had been adjudged to be a solemn acknowledgment like the conuzance of a fine, when left with a parish, is a statutable protection against any settlement to be gained there: that a pauper cannot say he will desert it: that in common justice he ought not to be permitted to say so; unless he could, by so saying, release the parish, to which he is certified, from every obligation to which the certificate subjects them: that on the contrary the pauper, who has, or by birth derives, a claim under it, may return whenever he shall please, the parish cannot refuse to receive him, nor can they, unless he becomes chargeable, remove him: that the construction contended for would deprive them of the advantage intended by the act, and expose them to numerous mischiefs: that, from their ideas of security on this subject, that caution, which was invariably used with respect to all other poor, was never interposed in the case of poor of this description; and that, even if they were not entrapped, not knowing, under the many and intricate circumstances that attend questions of abandonment, what legal niceties might prevail, some might be deterred by the peril of costs, from asserting their rights, and removing a certificated pauper: that the present line was a plain and intelligible one, without refinement, and level to common understanding; but that if nice distinctions were introduced, with those who were contentious and disposed to oppress, it would prove an eternal source of litigation. Is the period of absence, that denominates it an abandonment, to be five or fifty years? or what inter-

intermediate space? Shall this be accomplished by living in a neighbouring parish and renting a patch of garden ground for the subsistence of a family, or by engaging there in a farm or manufactory? And in what course of time can this be effected? Shall the consequences of residence in another parish, depend upon its having happened upon a visit or under the avocations of business? Upon which; and how long necessarily upon either? That not only there could be no end to these enquiries, and that to pursue the statute was the only safe guide; but that there could be no reasonable cause of complaint, no *gravamen*, on the other side; as no parish was compellable to grant a certificate. That in this particular case it was a strong circumstance, that the other parish understood themselves under an obligation to provide for the pauper; and had, in the character of their parishioner, recommended him to the infirmary. Lord *Mansfield*: The principle has been long settled of abandonment by disuse: at least it is to be found in the case of *Taunton St. Mary Magdalen*; and the circumstances of this case seem to me to be stronger than those in the *Taunton* case. Here the grandfather has a certificate, which in two years he deserts, and goes to his own parish; has a son there, and does not return to *Frampton*, the certificated parish, till seventeen years after, and then on special business. Before he so returned, the son is hired and serves a year in *Frampton*. The question then is, Whether the son went to *Frampton* under the faith of the certificate? Certainly not. *Frampton* had never heard of him: he goes there as an emancipated son in his own right, and acquires a settlement by service. It shall not be said, that he came under a certificate, abandoned by his father before he was born: and *quo animo* the pauper returns to the certificated parish must always be considered. It is material too, that in the *Taunton* case the court doubted, and did not determine the extent of the word "family" in the act, and whether it comprehended grandchildren. *Buller, J.* It don't appear that the court, in the case of *Spotland* meant to overturn that of *Taunton*. A mere going away indeed shall not avoid a certificate: but what absence shall have that effect is, by those cases, left open and unascertained. *Willes, and Ashurst*, justices, concurring; Rule discharged, and order of sessions confirmed. *Caldecott's Rep.* 97.

A pauper voluntarily leaving the parish to which she was certificated, and, after an absence of seven years, during which she is several times hired, and serves for a year in the parish certifying, voluntarily returning to the same house in
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the parish certificated to, and to a branch of the same family, with whom she had before lived under the certificate, does not thereby vacate her certificate. *K. v. the Inhabitants of Keel.* Caldecott's Rep. 144.

H. 5 G. 3. Spotland and Castleton. The pauper, John Hamer, was bound apprentice to a certificate man at *Castleton*, and served his master there for some years. He then removed with his master to *Spotland*, where he served him forty days and upwards, and then was married to a young woman whose parents lived in *Castleton*; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the day-time with his master in *Spotland*, but went and lodged with his wife at her parents' house at *Castleton*. It seems to be agreed by the court (independently of a certificate) that wherever the servant or apprentice lodges, there is his settlement. And, in this case it was urged that the certificate was out of the question: for by the apprentice residing with his master forty days in *Spotland*, he had gained a settlement there; as he did not reside in *Spotland* under the certificate. Consequently he came back from *Spotland* to *Castleton* free from the certificate, just as if there had been no certificate at all. And, by lodging there above forty days, he gained a settlement there, subsequent to that he had gained in *Spotland*. On the other hand, it was argued, that the certificate was still subsisting, and the master's removal to *Spotland* was voluntary, and not under any order of removal. The master is not stated to have gained any settlement in *Spotland*; so that he continued a certificate man to *Castleton*, and the apprentice was part of his family. By the court: The master, who was a certificate man at *Castleton*, gained no new settlement in *Spotland*; and the pauper still remained an apprentice to this certificate man. The master may still go back to *Castleton*, the parish to which he was certificated. It has indeed been determined, that if a certificate person goes to another parish, and becomes chargeable to it, and is, by an order of justices, removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force. The certificate subsists; and the apprentice remains part of his master's family: he was so at *Spotland*; and all along continued to be so. The certificate act says, that the apprentice shall not gain a settlement in the parish to which his master came by certificate. But, as this apprentice has gained an intermediate settlement, he ought to be sent to that

that settlement which he has intermediately gained. And the court were unanimous that his settlement was at *Spotland*. *Burr. Sett. Cas.* 527.

Certificate is meant as an indemnity to the parish which receives the certificated person.

In the case of *Newington and Mersham*, T. 26 G. 3. Lord Mansfield said, It seems to me, that a certificate given by the parish from which the pauper goes, to another parish, is an indemnity to that other parish from the consequences of permitting him to reside there; therefore it has done its office the moment that residence is permanently at an end. A temporary absence, for a particular purpose, will not discharge it; but when the pauper has left the certified parish for years, and neither party has had any reliance upon the certificate, then it has done its duty, and has no longer any operation. In this case, the pauper had left the certified parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged. The other judges gave their opinions to the same effect; and *Buller*, justice, further observed, that whenever a pauper returns to the certified parish, they should require from him a new certificate. 1 *Durnf. & East*, 354.

Certificate not binding against a subsequent settlement.

A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for, though it be a private agreement between the parishes, a private agreement in this respect shall not alter the law. 3 *Salk.* 253. *Harrison and Lewis*.

An apprentice to a certificated man may gain a settlement in a third parish.

In the case of *Petham and Dymchurch*, M. 14 G. 2. The pauper was bound apprentice to a certificate man in *Tenderden*, and, after living with him there two years, was by him assigned over to a parishioner of *Lidd*, whom he served, and with whom he inhabited for the remainder of the seven years. And the court were all of opinion, that such assignment being good as to the purpose of a settlement, the apprentice gained a settlement in *Lidd* the uncertificated parish. *Str.* 1147.

Certificate does not exclude a person from getting a settlement in any other parish but that which it indemnifies.

In the above-cited case of *Sherborne and Thornford*, E. 15 G. 2. it was observed by Mr. justice *Denison*, and agreed to by all the court, that a certificate provides for the security of that parish only into which the certificate person comes to reside by virtue of such certificate; but does not exclude him from gaining a settlement in another parish, in the same manner as any other person may do, *Burr. Sett. Cas.* 186.

T. 28 G. 2. *Horsley and Hollingsclough*. *Horsley* gave a certificate to *Abraham Cope* and his family, who went with it

it to *Hollingsclough*, where his son, the pauper, was born. The pauper, at the age of twelve years, went to *Peck*, where he was hired and served for a year, and then returned to *Hollingsclough*. The question upon this case was, Whether the son of a certificate person, born in the parish to which his parent came by certificate, could gain a settlement in a third parish by a hiring and service for a year? And the court were clear that this gained a settlement in the third parish. *Burr. Settl. Cas.* 385.

In the case of *Great Torrington* and *Bideford*, *T. 30 & 31 G. 2.* By a certificate from *Lancrafts*, *Mary Bray* came to *Bideford*, and continued there some years. She was then bound apprentice by the officers of the parish of *Lancrafts*, and lived under the indenture at *Great Torrington* for several years. The apprenticeship being expired, she hired for a year, and served that year in *Bideford*. The question was, Whether by this hiring and service she gained a settlement at *Bideford*, to which place she had come by certificate? And it was adjudged (the point being clearly given up) that having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at her liberty to gain a new settlement at *Bideford*, as any uncertificated person could be. *Burr. Settl. Cas.* 429.

And a similar case of *Keynsham* and *Hanham*, in the same term, was decided in the same manner.

A certificate is discharged by a removal, as in the following case. *H. 28 G. 2. Sudbury and Uttoxeter.* *Thomas Bladon*, being settled at *Sudbury*, came by certificate with his wife and children to *Uttoxeter*. *Thomas* died there, and his wife and children becoming chargeable, were removed and sent back to *Sudbury*. In about a year after, *John Bladon*, one of the said children, was bound apprentice in the parish of *Uttoxeter*, and served out his time there. The question was, Whether by such apprenticeship he gained a settlement at *Uttoxeter*. By *Ryder*, chief-justice, and the court: The removal in this case to *Sudbury*, restored the pauper to a new right of gaining a settlement; for the certificate is, as it were, *functus officio*, and is discharged by the order of removal. It can have its effect but once; and, after the removal back, is totally at an end; the certificate person being restored as fully to the capacity of gaining a settlement, as if there had been no certificate at all. The law is so far from looking upon a certificate as continuing after an order of removal, that the pauper cannot return to the place from which he was removed, without incurring a penalty,

Removal discharges a certificate.

penalty. And it was adjudged that the pauper gained a settlement at *Uttoxeter*. *Burr. Settl. Cas.* 373.

3. Settlement by Birth of legitimate Children.

In what cases legitimate children may be settled, where born.

Where the last legal settlement of the father of a legitimate child is not known, the child may be sent to the place of its birth, as well as an illegitimate one. *Blackerby*, 246. The case of *Rickmansworth* and *St. Giles's*.

And in the case of *Cripplegate* and *St. Saviour's*, *H. 8 Ann.* It was adjudged by the court, That the father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *prima facie* is the settlement of the child, till there is another settlement found out. *Foley*, 265.

The same was adjudged in the case of *2. and St. Giles's*, *E. 10 Ann. 1 Sess. Cas.* 18.

By the 13 G. 2. c. 29, For confirming and enlarging the powers, given by charter to the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided, That no child, nurse, or servant, received or employed in such hospital, shall, by virtue thereof, gain any settlement in the parish where such hospital shall be situated.

The settlement of *foundlings*, therefore, is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement: if neither of these is known, or if the children are bastards, they shall be settled where they are born; if that cannot be known, which is properly the case of a *foundling*, this seems to fall under the general rule, that every person shall be maintained and provided for in the place where he happens to be, till a settlement can be found; for, in a christian civilized country, no person ought to be suffered to perish for want of necessaries. But, in the present case, the act takes such children off the parish, and leaves them to the provision of the hospital.

4. Settlement by Birth of Bastards.

For ample information on this head, the reader is referred to the title BASTARD, in the First Volume of this work, page 293.

5. Settlement of Children with their Parents.

Birth of legitimate children.

The birth of legitimate children gives them no settlement, except

except where the settlement of their father and mother is not known, and then only till it is known. *Foley*, 269.

It seems now agreed that a legitimate child shall necessarily follow the settlement of its parents as a nurse-child, or as part of the family, only till it shall be seven years of age; and that, after that age, it shall not be removed as part of the father's family; but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of his own. But it seems no difficult matter to determine, with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parents' settlement: for the 5 *Eliz. c. 5. s. 12*, enacts, That a child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *G. 2.* a vagrant's child of that age may be put out an apprentice by the justices: and when he shall have resided and lodged in a parish for forty days under the indenture, he will have thereby gained a settlement. A person may therefore gain a settlement in his own right, at the age of seven years and forty days. 3 *Burn*, 366.

At what age a child may gain a settlement in his own right.

Where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child, and a child may be sent to the place of his father's settlement, without ever having been there before. *Str.* 580. *L. Raym.* 1332. *St. Giles's Reading*, v. *Everfley Blackwater*, H. 10 G.

Father's second settlement is communicated to the child.

And in the case of *Sowton and Sydbury*, M. 12 G. 2. The question was, Whether the children, being above the age of nurture, shall be removed with the father to the father's settlement, where the child had never inhabited? By *Lee*, chief-justice, in the case of *Everfley Blackwater*, the court were of opinion, that a child might be sent to the settlement of his father, though it had never been there before, contrary to the opinion of *L. Parker* in a former case. And he said, the true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement: 2 *Sess. Cas.* 150. *Andr.* 345.

Children to follow their father's settlement till they gain one in their own right.

And in the case of *Coroner and Milton*. By *Holt*, chief-justice. It is not the birth, but the settlement of the father, that makes the settlement of his child; and, if the father has gained a new settlement for himself, he has also gained a new settlement for his children, who do not go with him to his new settlement as nurse-children, but as part of his family. 3 *Salk.* 259.

If a father gains a new settlement, so do his children.

But if a son mar-
ries and lives
distinct from
his father, he
cannot follow
his father's set-
tlement.

H. 21 G. 2. *Bugden and Ampthill.* John Green, fa-
ther of Thomas Green the pauper, came by certificate from
Royston to Ampthill. They remained together at Ampthill
under the certificate, till Thomas the pauper came of age,
soon after which he married in Ampthill, and left his father,
and lived there with his wife and children distinct from his
father, till removed by the present order. Three years after
the marriage of Thomas, John the father removed from
Ampthill to Bugden, and there gained a settlement: but
Thomas the pauper never lived there. It was argued that
here was a good settlement of the pauper at Bugden, for
that the last settlement of the father would be the legal set-
tlement of the son, unless the son had gained a new settle-
ment of his own. On the other hand, it was insisted, that
as the son did not live with his father at Bugden, he could
not gain any settlement there, being no part of his family;
and the rather, because he had an independent and distinct fa-
mily of his own at another place. And of that opinion was
the court; who held, that the pauper ceased to be part of
his father's family, upon his marrying and living separate
and distinct from his father. *Burrow's Settl. Cas. 270.*

E. 9 G. 3. *Walpole St. Peter's and Wisbech St. Pe-
ter's.* The pauper, being settled at Outwell as part of his
father's family, listed himself for a soldier, and continued in
the service four years. After his discharge, he came home
to his father, who had removed from Outwell, and then
lived at Walpole, and rented and occupied a farm there of
about 50l. a year, and continued with his father there about
twelve or fourteen weeks; and afterwards worked at dif-
ferent places as a labourer, till he was removed by order of
two justices from Wisbech to Walpole aforesaid. The ses-
sions, upon appeal, confirm the order. It was moved to
quash both these orders, for that the pauper's legal settle-
ment was at Outwell; which was the place of his father's
settlement at the time of the pauper's leaving his father's fa-
mily, and consequently the pauper's own derivative settle-
ment. The son, by listing himself for a soldier, and con-
tinuing four years in the service, became emancipated from
his father's family; and not having gained any subsequent
settlement for himself, must resort to his old derivative set-
tlement at Outwell; and could not, after such an emancipa-
tion from his father's family, gain a settlement at Walpole
St. Peter's, where his father had newly and subsequently
gained a settlement, but had none there when the son left him
and ceased to be part of his family. And a rule was made to

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shew cause. Which rule, upon affidavit of service, was made absolute, without defence. And both the orders were quashed. *Bur. Settl. Cas.* 638. *Blackst. Rep.* 669.

H. 15 G. 3. Halifax and Warley. Case specially stated: *John Bragg*, the father of the pauper, went with a certificate from *Skircoat* to *Halifax*; where the pauper was born. And when he (the pauper) was about fifteen years of age, he bound himself an apprentice by indenture to *William Smith* of *Halifax*, stuff weaver, for the term of four years; and served his master there for that time. After he was out of his apprenticeship, and when he was about nineteen years of age, his father took a farm of twelve pounds a year in *Warley*, and went and resided there several years: that his son the pauper, always after the father went to *Warley*; worked about the country as a stuff weaver, but came to his father at *Warley* when he pleased, and kept his holiday cloaths there, and considered his father's house as his own home: that when he came to his father's house, he paid for what he had, and was his own master, to go and work for himself whenever he pleased. Lord *Mansfield* was not in court. The other three judges thought that the son could not be considered as emancipated, or independent of, or separated from his father. He went to his house when he pleased, and had his cloaths there. Mr. justice *Ashton* said, that where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement where his father goes to reside: but if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles. The distinction was well laid down, he said in the *Bugden* case; and he observed, that in the case of *Walpole St. Peter's*, the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it. *Burr. Settl. Cas.* 806.

T. 29 G. 3. K. v. the inhabitants of Witton cum Twambrookes. The pauper's father, *John Hewitt*, rented a tenement of 16*l.* a year in *Witton cum Twambrookes, Chester*, and resided upon it above a year, when the pauper was about six years old. *John Hewitt* then went to *Middlewick*, where he did not act to gain a settlement, and about two years after ran away from his family; and the pauper's mother, taking the pauper with her to *Congleton*, died in half a year, when the pauper was left in the care of one *Jane Brookes*, with whom he lived at *Congleton*, and worked at the silk-mills there. And the overseers of the poor of *Witton* paid the whole or a part of his maintenance for four years to *Jane*

A child is not emancipated so as to lose the benefit of any settlement which his father may gain; till twenty-one or marriage; or till he has gained a settlement in his own right, or till he has contracted a relation inconsistent with the idea of his being part of his father's family.

Brookes, after which period the pauper supported himself till the age of sixteen; at which time he got 3s. 9d. per week, and boarded himself where he liked. During the first part of the time he lived at *Congleton*, he saw his father twice at the distance of about four years, at which times his father did not give him any thing (except a pair of breeches, and twopence halfpenny the first, and only three halfpence in money the second, time.) At eighteen or nineteen years of age the pauper went from *Congleton* to *Sheffield*, and hired himself for four years, by which hiring however he gained no settlement. He heard that his father had been to enquire after him at *Congleton*, and that he then lived at *Dunham*, to which place the pauper went to see him, and was at that time twenty-three years of age, and married. It appeared that the father had made such enquiry as above mentioned after the pauper, from his daughter (the pauper's sister) with intent as he said to give him a suit of cloaths, as he had done less for the pauper than any of his children. It appeared that the father *John Hewitt* had married a second wife, and held a tenement in *Dunham* of 11l. a year, and had lived upon it eight years when his son went to see him there as above; upon which visit he staid only one hour, and never saw his father at any time but as above. Upon the above facts the justices at the *Chester* sessions were of opinion that the settlement of the pauper *George Hewitt* was at *Witton cum Twambrookes*; that place appearing to them the last settlement the pauper's father had whilst the pauper remained a part of his family; and they confirmed the order of two justices, by which the pauper, and his wife, and family, were removed from *Stockport* to *Witton cum Twambrookes*. *Bearcroft* and *Manly*, in support of the order of sessions, attempted to shew that the pauper was emancipated, because after the age of eight years the pauper's father had no domicile of which the pauper could be a member. But *Lord Kenyon, Ch. J.* said, It was never conceived in any case that a son, who was only sixteen years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being twenty one or married, or having gained a settlement in his own right, or (as in the case of the soldier) having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family. *Buller, J.* In this case the pauper remained under the power of his father the whole time. By the court. Rule absolute. 3, *Durnf. and East.* 355.

If the father dies before the child is born, the child shall be settled where the father was settled before his death. *M. 5 Ann. 2. v. Clifton. 19 Vintr 382.*

And in the case of *K. v. Luckington, T. 8 W.* It was held by *Holt* chief-justice, that the death of the father does not alter the child's settlement. *Comb. 380.*

M. 1 G. St. George's and St. Katharine's. A man settled in *St. Katharine's*, married, had six children born there, and then died. After his death, the widow goes into the parish of *St. George*, with her six children, and rents a house there of 12^l. a year, and lives in it with her children four months. The single question was, Whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St. George*? And the whole court were of opinion, that the six children were settled in the parish of *St. George*, where the mother's last settlement was. And by *Parker* chief-justice, There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage, is, because it is then not *her family*, but *her husband's*; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley, 254. 1 Sess. Cas. 69.*

Father dying before the child's birth.

But otherwise where the widow gains a fresh settlement, if such settlement is not gained by intermarriage.

And in the case of *Woodend and Paulspury, H. 13 G. John Buncher* was settled at *Woodend*, and died, leaving a widow and one daughter aged fourteen years. The widow removed to *Paulspury*, into a messuage and tenement of her own for life, and took her daughter with her, who lived with her there two years. And the question was, Whether the daughter gained a settlement at *Paulspury*? And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement, and a mother's, in such case as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could

she be removed from her. *L. Raym. 1473. fol. 256. Str. 746.*

And the like was held by the court in the case of *Oulton and Wells, M. 9 G. 2.* And in the case of *Barton Turfe and Happisburgh, T. 8 & 9 G. 2 Burr. Settl. Cas. 49.*

In the above case of *Woodend and Paulspury* aforesaid, *H. 13 G.* It was said, that if after the husband's death the wife shall marry again, to a man settled in another parish; her children by her former husband must go with her for nurture, but they are no part of her second husband's family, and therefore gain no settlement thereby in the parish where the father-in-law is settled. *L. Raym. 1473.*

T. 6 & 7 G. 2. St. Giles in the Fields and St. Clement's. *Jacob Maile*, the pauper, was an infant of nine years of age. His father's settlement was not known; but his mother's settlement before their marriage was known. His father died, and his mother married a second husband, who had a settlement; and she, consequently, gained a new settlement by this second marriage. By the court: *Jacob Maile's* settlement is where his mother was last settled before her marriage with *Jacob's* father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband. And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is. *Burrows's Settl. Cases, 2.*

Father having
no settlement,
whether the
child shall fol-
low the mother's
settlement.

H. 12 G. Westram and Childingstone. An *Englishman*, whose settlement was not known, married, had a child, and ran away: the child was then nine years of age. By the court: The mother and child ought to be settled where the mother was settled before marriage. *Foley 252.*

In the case of *K. and St. Paul's, Shadwell, T. 9 G.* Resolved by *Ayre and Fortescue*, that where the father being a foreigner had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth. *2 Sess. Ca. 113.*

Also in the case of *St. Giles's and Everfly Blackwater, H. 10 G.* it was held by the court, that where the father's settlement cannot be found, and the mother's can, the child shall have the benefit of the mother's settlement. *2 Sess. C. 112.*

H. 28 G. 2. St. Botolph without Bishopsgate, and St. John's, Wapping. A child of an *Irishman* having no settlement in *England*, and supposed to be on board a man of war

war in the *West Indies*, and of his wife being an *Englishwoman*, was adjudged to go with the mother to the mother's settlement which she had before marriage. *Burrow's Settl. Cas.* 367.

And in the case of *St. Matthew's, Bethnal-Green*, and *St. Katherine's*, *M.* 33 G. 2, it was held by the court, that the rule laid down was this; That the child's settlement follows that of its father, if the father's *can be found*; and that no recourse shall be had to the mother's settlement till that of the father can be traced no farther. *Burr. Settl. Cas.* 482.

Where a child is first known to be, that parish must provide for it till they find another. By *Holt*, chief-justice. *Comb.* 364, 372.

A travelling woman, having a sucking child, was apprehended for felony, sent to gaol, tried, and hanged. This child is to be sent to the place of its birth, if it can be known; otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, it being no malefactor. *Read. Poor, Dalt. c.* 168.

VI. Settlement by Apprenticeship.

Respecting settlement by *apprenticeship*, the reader is referred to the title APPRENTICES, Vol. I. page 111.

VII. Settlement by Service.

The 13 & 14 C. 2. c. 12, enacts, that, On complaint by the churchwardens or overseers, within forty days after any person shall come to settle in any tenement under 10*l.* a year, two justices (1 2.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least.

Two justices may remove a person within forty days, occupying a tenement under 10*l.* a year.

And by the 1 Jac. 2. c. 17, Such forty days continuance shall not make a settlement, but from the time of delivering notice in writing,

Forty days after notice, by the 1 Jac. 2.

And by the 3 W. c. 11, From the publication of such notice in the church.

But it is provided by another clause in the said act of the 3 W. that, If any unmarried person, not having child or children, shall be lawfully hired into any parish or town for

Service for a year.

one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published.

Explanation of what is meant by service for a year.

And the 8 & 9 W. c. 30, explains, that, Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in such service during the space of one whole year.

But not if with a certificate person.

But by the 12 Ann. st. 1. c. 18, If any person shall be a hired servant with any person, who did come into, or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place; such servant shall not gain any settlement in such parish, township, or place, by reason of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. s. 2.

No certificated person shall gain a settlement by service.

And the 9 & 10 W. c. 11, declares that, No person who shall come into any parish by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement in such parish, unless he shall bona fide take a lease of a tenement of 10l. a year, or shall execute an annual office in such parish.

A settlement cannot be acquired in less than 40 days.

Forty days.] A residence of forty days is required to gain a settlement. As in the case of *Goring and Moleworth*, E. 4 G. 2. A poor man gained a settlement at *Moleworth*, and was afterwards hired by two partners of a boat at *Goring* for a year, to serve in the said boat, which plied between *Goring* and *London*, for the year. The servant was not forty days in the whole year at the parish of *Goring*, but served out the year on board the boat. The question was, Whether the party gained a settlement at *Goring* by such service? By the court: This was no settlement at *Goring*. *Sess. Cas.* 327. *Fitzgibbons*, 255.

But such residence need not be without interruption.

But it is not necessary that a servant should reside forty days together without interruption. It is sufficient if within the year he resides forty days in the whole. *Burr. Settl. Cas.* 243. *Greenwich and Longdon*, M. 18 G. 2.

Where 40 days have been served in two parishes, the last night gives a settlement.

In the case of *Hulland and Bradley*, E. 21 G. 3, It was determined, that, when a person has resided part of the year in one parish, and part in another, at different times and intervals, making when added together more than forty days

days in each, his settlement is in the parish where he lodged the last night. *Douglas, 633. Caldecott's Rep. 118.*

E. 16 G. 3. Lowes and Lanstephan. The pauper was hired for a year to *John Williams* of *Lanstephan*, where his master occupied his own estate. He continued there with his master in *Lanstephan* till near *St. Peter's-tide*, when his master and family removed to *Lowes*, in which parish he rented another farm. He continued with his master in *Lowes* till the 16th of *January* following; when his master and family removed to *Lanstephan*, and afterwards constantly resided there. But the pauper was sent back by his master to *Lowes*, to thresh the corn and look after his master's cattle. The pauper staid in *Lowes* two or three nights and days, and eat and lodged there; and then returned again to *Lanstephan* in like manner as aforesaid; and so continued between the said parishes to the end of his year, which was the 17th of *May* following. The pauper never continued forty days together in either of the two parishes after the said 16th of *January*, but resided as aforesaid more than forty days in the whole, in each. He verily believed, he resided most at the latter part of his service in *Lanstephan*, and lodged there the last night; and went from thence in the morning to *Lowes*, and took some cattle of his master's from thence to *Hay-fair*, where he finished his service. The court held him to be last legally settled in *Lanstephan*. *Bur. Settl. Cas. 825.*

E. 23 G. 3. K. v. Inhabitants of Iveston. Two justices by an order remove *James English* and *Margaret* his wife, from the township of *Newburn*, in the parish of *Newburn* in the county of *Northumberland*, to the township of *Iveston* in the parish of *Lanchester*, in the county of *Durham*. The sessions on appeal confirm the order and state the following case: That *James English* at *Martinmas* 1752, being then an unmarried person, not having child or children, was hired by messrs. *William Newton* and *Samuel Newton*, as a collier, to serve them for one year from thenceforth: that *Kyo* and *Eveston* are two separate townships in the parish of *Lanchester*, and maintain their own respective poor. That he entered into the service accordingly, and served out the whole year; that he resided at *Kyo* when he was so hired, and continued there till the *May-day* following, and then married: that about fourteen days after his marriage he took a cottage in the township of *Iveston*, which is not far distant from *Kyo*; and without the privity of his master removed thither from *Kyo* with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service, and then they returned

A similar adjudication.

If there is an inhabitancy under a hiring for a year of forty days at any intervals throughout the year in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and, if throughout the year the whole will there amount to forty in that place the settlement attaches.

turned to *Kyo*. *Lee*, solicitor general, shewed cause in support of these orders; and contended, that a settlement by service is acquired in that place, in which the servant inhabits the last forty days of the year in such a capacity in which it is legally competent to him to acquire a settlement; that it is fully settled that, provided the pauper is single (and thence capable) at the time of making the contract of service, marriage during any part of that annual service will not take away his capacity: that a man may acquire as many settlements as there are forty days in the year; but that the law and the sense is, that they must follow each other in an unbroken series, without interruption or interval. *Buller*, J. But during the forty days (in what manner soever they ought to be reckoned) in which the pauper inhabited at *Iveston* without the consent of his master, was he or was he not removeable? *Lee*. A hired servant is not removeable during his service: and it will often happen that the service cannot, as here, be performed where the master resides; and the justices have no power to dissolve a contract. *Willes* J. But in the case of a servant working in a coal-pit, which is the present case, such servant may be in the service of his master: here it does not appear that the pauper was at the time in his service; and the case expressly finds that the residence in *Iveston* was without even the privity of his master. *Wilson*, in support of the rule to quash these orders, insisted, that, as a settlement cannot be acquired by service till the year is fully compleated, the pauper, when he quitted *Iveston*, could not have acquired a settlement: that it was yet, it was then, uncertain whether he ever would; and that the construction of the act of parliament was, that if there is an inhabitancy of forty days at any intervals throughout the year in any number of parishes, wherever the last day's inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if throughout the year the whole will there amount to forty, in that place the settlement attaches. That this was so settled in the case of the *K. v. the Inhabitants of Lowess*; and that the principle of that decision had been confirmed in the case of the *K. v. the Inhabitants of Hulland*. That that case differs from the present only in this circumstance, that there were not there forty days successive service in either parish; and this the law says there need not be: that as it could not be controverted, that, till the year was compleated, a settlement by service could not possibly be perfected; it was absurd, and as contrary to reason as to the authorities, to say, that while the pauper was for the four-

teen

teen days preceding the expiration of the term inhabiting in *Kyo*, he was acquiring a settlement in another place. To be sure his marriage after the commencement of his contract could be no bar to his acquiring a settlement any where. *Willes, J.* Independent of authorities, the rule, as it is recognized in the *K. v. Hulland*, seems to me to be agreeable to the construction of the act of parliament; for the service is not consummate till the last day: the servant shall therefore be settled in the place where he served, when it was so completed. This case is similar to that of *Hulland*; and precisely that of *Lowes*. We have laid down the rule, and nothing is offered to impeach it; and we are all of opinion, that it ought to be adhered to. Lord *Mansfield* and *Buller, J.* concurring, lord commissioner *Ashurst* was absent. Rule absolute, and both orders quashed. *Caldecott's Rep.* 288.

Two justices (12.) may remove him to the place where he was last legally settled.] But the justices upon the complaint of the parish officers, cannot remove the servant from his master; because they cannot, upon such complaint, dissolve the contract between the master and his servant, to which contract the officers are no parties; for that can only be done on the complaint of the master or servant. Therefore, if a female servant shall happen to be with child, and such child is likely to be born a bastard; yet, if her master is willing to keep her, the parish cannot remove her: but the master, if he pleases, may complain to a justice of the peace that she is less able to perform the service, and the justice (if he sees cause) may discharge her; and then the parish, by order of two justices, may remove her.

If any unmarried person, not having child or children] In the case of *Antony and Cardigan, E. 10 Ann.* A person having a daughter, which daughter was married and settled elsewhere, hired herself for a year and served the year. By the court: He is a single person within the meaning of the act, though not expressly within the letter of it. The meaning of the statute was, that he might not bring any consequential damage to the parish, which he cannot possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Foley,* 131. Unmarried person hiring.

In the case of *Farringdon and Witty, E. 1 Ann.* A servant hired for a year, served half a year, and married. The question was, Whether the justices, on complaint of the overseers, could make an order to remove him to the place of his last legal settlement? By the court: The contract Marrying during the year.
between

between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet, without that, and upon complaint of the officers only, it could not be dissolved. And the marriage does not hinder the service; the contract continues; and if a man performs his service, he gains a settlement. 2 Salk. 527.

A similar decision took place in the case of *K. and Sutton*, 2 Sess. C. 121.

If a servant be unmarried at the time when he is hired for a year, he gains a settlement by a yearly service, though he marry before the service commences.

T. 29 G. 3. K. v. the inhabitants of Allendale. John Drisdale and his wife were removed by an order of two justices, from *Lambly* to *Allendale*, both in the county of *Northumberland*; and the sessions on appeal confirmed that order, subject to the opinion of this court on the following case: In *February* 1786 the pauper, *John Drisdale*, being then an unmarried man, not having child or children, was hired for a year to serve *Thomas Benson* at *Allendale*, from *May-day* 1786 to *May-day* 1787, as a hind. It is the custom in that country to hire married men, as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and the servant, and perfectly understood by them, at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of the service, he married his wife, the other pauper, and entered upon his service a married man, and served out the whole year a married man at *Allendale*. *Chambre*, in support of the order of sessions, was stopped by the court. *Erskine*, against: The pauper must be considered as a married man within the restriction of the statute 3 W. & M. c. 11. s. 7, which enacts that "if any unmarried person, not having child or children, shall be hired into any parish for one year, such service shall be deemed a good settlement therein;" for the legislature meant to restrain those persons, who were married at the time of entering into the service, from bringing a charge upon the parish. Otherwise, according to the strict letter of the act, if a person were hired to serve at any distant period, and before the service commenced he married and had a large family, he would be entitled to a settlement by such hiring and service. But, in construing this act of parliament, the court has looked to the spirit, and not to the letter, of it. For in *K. v. Bank Newton* the court held that a person, who was married at the time of the hiring, but whose wife died before he entered into the service, gained a settlement by hiring.

ing, and service. And though in that case the pauper was hired by an agent for the principal, who did not confirm the contract till after the death of the wife, yet when he did ratify the act of his agent, it had reference to the time when the original contract was made. The time therefore when the service commences (not the time of the hiring) is the criterion by which the court is guided in determining whether or not the case comes within the statute. Lord Kenyon, Ch. J. The principle, on which this question must be decided, has been long settled. So long ago as the *1st Anne*, in a case between the parishes of *Farringdon* and *Witley*, it was held that the pauper, who was unmarried at the time when he entered into his contract of service, though he married during his year, should not for that reason be prevented from gaining a settlement in the parish where he performed the service. And in deciding that case the court went on the words of the statute 3 *W. & M. c. 11.* which enacts, That if any unmarried person, not having child or children, shall be lawfully hired, such service shall be deemed a good settlement, &c. Therefore on the words of this statute the pauper in the present case gained a settlement by hiring and service at *Allendale*; for, though he married before the service commenced, yet he was unmarried when he entered into his contract: and whether he married the day before the service commenced, or six months afterwards, it makes no difference. The case of *K. v. Bank Newton*, which was alluded to in the argument, also settles the principal on which we decide this case. It has been argued now as if the court in that case had proceeded on the idea that the pauper was hired on the 16th *February*; but the court expressly took it as the foundation of their decision that he was not hired till the 24th, when he had ceased to be a married man. The court therefore in that, as well as in the former instance, seemed to think that the time to be attended to was the time when the contract was made: and that has ever since been considered as the rule. *Bulter, J.* Neither the custom of the country nor the agreement between the parties went to compel this pauper to marry before he entered upon his service; he was at liberty to do so or not, as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female: it is therefore indifferent to the master whether the servant be married or not, because, if he be single, he must hire some female to perform those services. As to the case put at the bar of a contract at an unreasonable distance of time before the service is to commence, that would be strong evidence of fraud. So if

this

this pauper had been under an agreement to marry, and the master had told him that he should not marry for a month, in order to evade the statute, that also might be considered as fraudulent. But there is no pretence to say that there is any fraud in this case. Both orders affirmed, 3 Durnf. and East. 382.

Servant sleeping with his wife, without his master's knowledge, out of the parish in which his master lives, gains a settlement there.

T. 18 G. 3. K. v. *Inhabitants of Hedfor*. Two justices remove *William Monk*, *Jane* his wife, and their four children, from the parish of *Little Marlow* in the county of *Bucks*, to the parish of *Hedfor* in the same county. The sessions, on appeal, confirm the order, and state the following case: That *William Monk*, the pauper, being legally settled at *Bampton* in the county of *Oxford*, the place of his birth, about ten years ago, then being unmarried, was hired to the right honourable *William* lord *Boston*, of the parish of *Hedfor* in the said county of *Bucks*, for a year, as a gardener, and served him there several years: that about ninety-five days before the expiration of the fourth year's service, he married a woman of the parish of *Little Marlow*; and from the time of his marriage, and till the expiration of that year's service he lodged with his wife in the parish of *Little Marlow* forty nights, but not successively; and did not lodge forty nights elsewhere from the time of his marriage, till the expiration of the year in which he married. It does not appear that lord *Boston* had any property whatever in *Little Marlow* parish. It also appears that he did not see lord *Boston* within that year he married; also it appears he never asked his master's consent to be absent for the said forty nights, in which he lodged at *Little Marlow*, or any part of it; nor did his master give any consent for such absence; it does not appear where he lodged the last night of that year in which he married, and which completed his service with lord *Boston*, under the hiring and service for a year: it also appears that he never performed any service whatever in *Little Marlow* on account of his said master, lord *Boston*; that he continued to serve his master lord *Boston* several years after his marriage. *Dunning* shewed cause in support of these orders; and contended, that the inclination, which the court has always shewn in favour of settlements in consequence of service, need not be indulged in the present instance, because without question the pauper had gained a settlement in the service of the first year. The only doubt was upon the service of the last. Formerly it was questioned, whether the service ought not to be in the same house; and though it was thought sufficient, if in the same parish, yet it has since been holden, that if a servant

vant continues forty days in a parish in his master's service, the reason why the forty days gain a settlement is, because the servant comes into such parish with his master; and that the court would not permit a servant, in a parish where his master had no property, and where he was not in his master's service, where consequently he ought not to have been, and where in point of fact his master did not know that he was, clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him, so to gain a settlement. *Wallace*, solicitor general, in support of the rule to quash the orders. A variety of cases have decided that a man is settled where he lodges the last forty days. Neither need these days be successive. The case of the *K. v. The Inhabitants of Castle-ton* is in point. The only difficulty is, whether the want of the master's knowledge of the fact can make any difference? If his master's business is done as well as if he lodged in the family, which the case shews it must have been, it can make none. Lord *Mansfield*: The cases seem to have settled it. *Willes*, *Ashurst*, and *Buller*, justices, concurring, rule absolute and both orders quashed.

T. 27 G. 2. Hanbury and Tardebigg. The pauper was hired for a year at *Hanbury*, served three quarters of the year, and then married; whereupon his master took him before a justice, who allowed the master to discharge him for marrying within the year, but made no order in writing. By *Lee*, chief-justice, and the court: Here is no act of jurisdiction in the justice, having made no order in writing. This is no discharge of the service. And the justice can only, by the statute of the 5 *Eliz. c. 4*, discharge for reasonable cause; and that marriage itself, as such, is not a reasonable cause; the same being no offence, nor inconvenience to the public. *Burr. Settl. Cas. 322.*

For one year] By the following adjudged cases may be gathered, what shall be deemed a sufficient hiring for a year within the statutes, by virtue whereof a person shall be entitled to gain a settlement.

M. 12 Ann. Horstam and Shipley. A person was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again in like manner for another year. The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley, 134.*

The hiring must be for a year.

M. 9 Ann Dunsford and Ridgwick; A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year

And for a year by one contract.

year

year in one continued entire service, but by two several hirings. By the court: It ought to be one entire contract, and one entire service: the one is required by the statute as well as the other. If service under several contracts shall gain a settlement, a person who serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement. For such a term as a year, it is not supposed a master would hire a person, unless able of body, and therefore one not likely to become chargeable. 2 Salk. 535.

So in the case of *Great Salkeld and Lowther*, H. 11 G. 3. Where the pauper served a year under two hirings of half a year each. *Burr. Settl. Cas.* 674.

A hiring three days after Michaelmas till the Michaelmas following in Leap-year, together with a service till the day after Michaelmas-day, making 365 days, will not give a settlement.

E. 29 G. 3. K. v. the Inhabitants of Ackley. The pauper, being unmarried, on Saturday, 13th October 1787, being three days after old Michaelmas-day, which happened on a Wednesday, was hired to T. Clarke of Ackley, in the county of Oxford, to serve him till the next Michaelmas. He accordingly went into such service, and continued therein till Saturday the 11th of October 1788, being the day after old Michaelmas-day, which (it being leap-year) happened on a Friday, and was paid his wages and went away. As this was a service of 365 days, the court of sessions thought it gained him a settlement in Ackley, and confirmed the order of removal, by which he and his wife were removed from Bicester Market End to Ackley. Woodeson, in support of the order of sessions, contended, that as the terms of the contract itself were ambiguous, since the hiring until the next Michaelmas meant till that time of the year, it might be explained by the subsequent acts of the parties: then, as the pauper continued in service for 365 days, it was sufficient to give him a settlement. But even if the contract were confined to Michaelmas-day, as the word "until" has been held to be inclusive of the day, he then was hired for and served a legal year, which consists of 13 lunar months, or fifty-two weeks. But the court were clearly of opinion that here was no hiring for a year: it is stated that the pauper three days after Michaelmas contracted to serve till Michaelmas following; this was therefore a hiring for two days short of a year. And though this court has been extremely indulgent in determining that services, which have been in point of fact less than a year, shall be sufficient to confer a settlement, as where the pauper has been absent with leave, &c. yet they have been always strict in regard to the contract of hiring. Order of sessions reversed. 3 Durnf. and East, 250.

H. 24 G. 2. *Wincaunton and Crediton*. A boy of about seventeen, born in *Wincaunton*, offered himself to serve *Samuel Williams* of *Charleton Horethorne*; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and cloaths when wanted; but no particular time was agreed on, and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure: nevertheless there was no agreement for that purpose. The boy continued and served him in *Charleton Horethorne* two years and an half. By the court: He gained a settlement there, by this service. A general hiring is a hiring for a year. And here are no circumstances in this case to shew an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper does not do it. *Burr. Settl. Cas.* 299.

General hiring implies hiring for a year.

In the case of *Handley and Berwick St. John's, E.* 33 G. 2, The pauper, settled at *Handley*, happening to meet Mr. Jones, head keeper of *Rushmore Lodge*, in the parish of *Berwick St. John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his servants or under-keepers, at the wages of 3*l.* a year and a keeper's livery, besides meat, drink, and lodging; the said Mr. Jones addressed the pauper thus, Do you like the life of a keeper? Which being answered in the affirmative, he said further, Then go into *Ned Hill's* place, and you shall want no encouragement. Accordingly he went, and continued in the service for three years, and received three years wages. The question was, Whether this conversation amounted to a hiring for a year, so as to gain a settlement? By lord *Mansfield* and the court: This man served three years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he was hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for *Hill* was a hired servant. And therefore it was adjudged that the pauper thereby gained a settlement. *Burr. Settl. Cas.* 502.

What may be deemed a general hiring.

In the case of *Basingstoke v. Stockbridge, M.* 14 G. 3, it was held by the court, that a general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary. *Burr. Settl. Cas.* 759.

M. 25 G. 2. *Ilam and Tutbury*. *Rowe Port*, of the parish of *Ilam*, esquire, hearing that the pauper was a likely boy to serve him as his postilion, sent to the pauper's father to have him upon liking. After the pauper had served

Hiring for a year, part of which was then past.

Mr. Port eight weeks on liking, Mr. Port hired him for a year, to commence from the beginning of the said eight weeks. He served Mr. Port in the said parish of Ilam a year (including the eight weeks) and ten days, and no longer. In this case, the commencement of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day passed. And the court were of opinion, that the pauper by virtue of this hiring gained no settlement in Ilam. *Burr. Sett. Cas.* 304.

Hiring for 11 months evades the acquisition of a settlement.

T. 3 G. Ranton and Haughton. Order specially stated: John Evans was hired with Ralph Trubshaw of Haughton, from Ash-Wednesday till Christmas, and served him that time. Then he went from him, and staid with his father in Ranton for about a week. He afterwards returned to the said Ralph Trubshaw, and was again hired for eleven months, and served him the eleven months: then he departed from Ralph Trubshaw, took his cloaths with him, and was absent one week. Then he returned to the said Ralph Trubshaw, and was hired with him for eleven months, and accordingly served him for that time; when he left that service, and went to his father in Ranton, and staid about one week. Then the said John Evans served one John Sutton of Haughton aforesaid for about three weeks; then returned to Ranton aforesaid, and staid about a week. He afterwards returned to the said John Sutton, and hired with him for eleven months, and served within a fortnight or three weeks of the last eleven months; where, by agreement with the said John Sutton, to avoid a settlement in the parish of Haughton aforesaid, he left him, took his cloaths, and went into the parish of Gnoffal, and there continued about a week; then he returned to the said John Sutton, and continued with him so long as to make up his service of the last eleven months; and three weeks before Christmas, the said John Evans hired himself again to the said John Sutton for another eleven months, and served him from that time till within three weeks of Michaelmas following, and then came away and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of Haughton? Parker Ch. J. said, this was an apparent fraud, and different from all the other cases. Pratt J. said, I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year: here the sessions have found it specially, and there is neither hiring nor service for a year. And suppose a man who lives in a parish incumbered with poor, hires

hires a servant for eleven months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful; and how can such hiring and service gain a settlement? As to the matter of fraud, if there is any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* (*Powis J.* being absent). Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement: and though such hirings, as in this case, defeat settlements; yet if that is a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands. *Fol. 137. Str. 83. 10 Mod. 392.*

T. 30 & 31 G. 2. Milwich and Crayton. *Thomas Thacker* was hired at *Milwich* for eleven months, for 4*l.* 10*s.*; and it was agreed between him and the master, that he should give in a month's service, beyond the eleven months. He served the eleven months, and also the given-in month, except the last three days, and he could not say whether he served them or not; but he received the whole 4*l.* 10*s.* wages. It was moved to quash these orders; because this was not a hiring for a year, being only for eleven months; nor a service for a year, because three days are wanting at the end of it. But the court were very clear, that this agreement is a manifest contract to serve for a year, notwithstanding the form of expression; (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion.) The real question is, Whether 11 and 1 make 12? There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is, to serve twelve months for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve, is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have laid for the wages till the end of the whole twelve months. And as to the servant's going away three days before the end of the year, the state of the fact does not support the objection. He could not say whether he did or not. But he received the whole 4*l.* 10*s.* wages; which at least seems to imply the master's consent or permission. *Burr. Settl. Cas. 433.*

In the case of *Bishop's Hatfield and Saundridge, H. 31* Hiring for a *G. 2.* A man was hired from *Michaelmas* to *Michaelmas*, year, with liberty to be absent for 5*l.* wages, with liberty to let himself for the harvest upon particular occasions. month, to any other person. He served till the harvest month

month, and then hired for that month, and received wages for it. During that month, he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the court: This is in effect only hiring for eleven months; and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop. *Burr. Settl. Cas.* 439.

Hiring for a year on a contingency of serving a month in the militia.

T. 13 G. 3. Old Sodbury and Westerleigh. The pauper *William Ayliff* was hired for a year to *Ann Tyler* of Old Sodbury to serve her for a year, but at the same time he told her, that he was in the militia, and *he might* be absent about a month in the year to attend on that duty, but that he would *pay a man to serve in his place*, or else he would make her *an allowance* out of his wages for the time he should be absent. He entered accordingly on his said service with the said *Ann Tyler*, and served her till the month of *May* following, and then joined and attended the militia for thirty days, and afterwards returned to his said service with *Anne Tyler*, and continued therein until the end of his year, and then made her an abatement of 8*s.* out of his wages for the time he was absent out of his service. Lord *Mansfield* was not in the court. Mr. justice *Aston* thought this case distinguishable from that of *Bishop's Hatfield*: that absence for a particular time, with the master's leave, not agreed for at the time of hiring, does not dissolve the contract. But in the case of *Bishop's Hatfield* the original hiring was with liberty to let himself for the harvest month to any other person. This made a clear chasm in the original contract. It was plainly a hiring for *less than a year*. In the present case a man is hired for a year, to serve for a year, but mentions an event that *might happen* of his being called out to attend his militia duty: and told his mistress, that if it should so happen, he would either *pay a man to serve in his place*, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service. Mr. justice *Willes* premised, that settlements ought to be favoured; and that militiamen ought not to have any additional hardship put upon them, if it can be avoided. However, he could not help thinking that the case of *Bishop's Hatfield* was very like the present case, and that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed either

either to find a *substitute*, or to abate out of his wages. Now this was at the election of his mistress; and she dispensed with his absence, upon an abatement out of his wages. Upon this distinction, and this only, I would, for the advancement of settlements, distinguish this case from that of *Bishop's Hatfield*. Mr. justice *Ashurst* said, that in a case which might affect a vast number of militiamen, he was for leaning in favour of their gaining settlements; and he thought this case to be distinguishable from that of *Bishop's Hatfield*. That case was certainly no more than a hiring for eleven months. But here was an *alternative*; it might happen, that the servant should not be called out. Therefore he concurred in supporting the settlement. *Burr. Sett. Cas. 753.*

And in the case of *Winchcomb v. Chipping Norton, E. 20 G. 3.* Lord *Mansfield* declared, The court ought to lean in favour of settlements; and the bad consequences would be very extensive, if we were to determine that a man should lose his settlement by serving his country in the militia. *Douglas 376. Cald. Rep. 94.*

But in the case of *Fleckney and Empingham*, the pauper hired himself for the year, at the wages of 3*l.* subject to a liberty of being absent eleven or twelve days in the sheep-shearing time. He served the year, including about eleven days when he went to shear sheep. It was contended that these eleven days ought not to be looked upon as an exception out of the original contract, but upon the foot of a leave of absence, consented to by the master. But the court were unanimously of opinion, that this was an exception out of the contract at the time of making it. They held it to be part of the contract, and not to be considered upon the footing of leave of absence given by the master; who, being bound by the contract, could not refuse agreeing to it. The militiaman's case, they said, was a particular case: it was no more than the law would have implied. And it was determined that no settlement was gained under this hiring. *Burr. Sett. Cas. 791.*

H. 5 G. Coombe and Westwoodbay, Michaelmas day was on Thursday, and a person was hired on the Saturday following, to serve till Michaelmas: and it was held to be insufficient to gain a settlement, being not a hiring for a year. *Str. 143.*

In the case of *Newstead and Holy Island, T. 10 G. 3.* Frances Downey was hired at Whitsuntide 1767 to Thomas Hill at Holy Island, to serve him a year from the said Whitsuntide to the Whitsuntide following, at certain wages. Hiring from Whitsuntide to Whitsuntide deemed a hiring for the year. She

POOR. (Settlement by Service.)

She entered on the said service accordingly at *Whitsuntide* 1767, and continued therein till *Whitsuntide* 1768, when she received a year's wages from her said master. It was further stated that it has been usual, in that country, to hire servants from *Whitsuntide* to *Whitsuntide*: and that an hiring and service from *Whitsuntide* to *Whitsuntide* has always, by the contracting parties, been deemed a year's service; and agreeable thereto, the master has always paid the servant a full year's wages for such service, without any diminution or addition, and without making any difference, whether the space of time between the one *Whitsuntide* and the other consisted of more or less than 365 days. It was argued that the space of time between *Whitsuntide* 1767 and *Whitsuntide* 1768, being less than a year (by sixteen days), no settlement was gained at *Holy Island* by this hiring and service; and though the court have sometimes relaxed a little as to the service, they never relaxed as to the hiring. But by the court: There is no case that proves the absolute necessity that the hiring should be for exactly three hundred and sixty-five days. It is stated to be the usual way of hiring servants in that country, and such service always deemed to be a year's service. Parish officers are, by the 43 *Eliz.* to be appointed in *Easter* week, or within one month after *Easter* (which is a moveable feast): yet they are considered as executing the office a whole year, though it may fall short of three hundred and sixty-five days. And it was adjudged that this hiring and service were sufficient to gain a settlement. *Burr. Settl. Cas.* 669.

E. 5 G. 2. South Cerney and Coultshourn. At *North-leach* are annually held two meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after. The pauper was hired on the *Wednesday* after *Michaelmas*, to serve till *Michaelmas* following; which he did. It was urged, that this being a hiring according to the course and custom of the country, was a sufficient settlement. But by the court: This is no settlement upon the face of it. There must be a hiring for a year, and that cannot be dispensed with. *1 Sess. Cas.* 156.

What may be considered as serving from *Michaelmas* to *Michaelmas*.

M. 13 G. 3. Navestock and Stondon Massey. Case specially stated by the sessions, "That *Thomas Fair* the pauper, at the statute fair at *Ongar* in *Essex*, on the day next after old *Michaelmas* day, to wit, on the 11th of *October* 1733, hired himself to *Samuel Possford* of *Navestock* in the said county, to serve till the old *Michaelmas*-day following; that he entered upon the service, and continued in it until the old *Michaelmas*-day following; on which day he

he received his wages, and quitted the service; it appearing to be according to the custom of the country, to hire servants at the said statute fair, namely, the day after old *Michaelmas* day, in the manner this pauper was hired, the opinion of this court (viz. of sessions) is, That the pauper gained a settlement in *Naveslock*, by the hiring and service above stated; subject to the opinion of the court of King's Bench, on the question, Whether the hiring as above stated is a sufficient hiring for a year to give the pauper a settlement?" It was argued, that this was no hiring for a year. It is a day short of a year. The acts of parliament positively require a hiring for a year, and a serving for a year; and the custom of the country cannot control a positive act of parliament. To which it was answered, That here appears to be a complete hiring for a year, and service for a year. But if it should be admitted, that a day was wanting according to rigid strictness of computation, yet the express stating it to be according to the custom of the country, made it a sufficient hiring for a year to give the pauper a settlement. By lord *Mansfield* (to which the rest of the court assented): There must be a hiring for a year. If the hiring be for less it will not do, be the deficiency ever so little. Two days or one day short, are equally an objection to its being a hiring for a whole year. Hiring from a *moveable feast* to a *moveable feast*, according to the custom of the country, has been determined to be a hiring for a year. And here they have stated the custom of the country to hire servants in the manner this pauper was hired, namely, at the statute fair the day after old *Michaelmas*. If this should be taken not to be a hiring for a year, there can be no settlement gained in this country by a servant: for all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from *Michaelmas* to *Michaelmas*. Burr. Set. Cat. 719. Bott. 387.

In the case of *Jessop* and *Missenden*, T. 13 Ann. *Sarah Barnes* lived with her father a year as a hired servant, in a little cottage on the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud; for it was to live with her father, who might be grown old. Fol. 142.

In the case of *King's Norton* and *Camden*, T. 13 & 14 G. 2. *Mary Calcut* was hired for a year, to spin yarn at 18d. a stone; and was to provide herself with meat, drink, washing, and lodging, where she pleased. She spun for her

Servant hiring with a father.

Hiring to be paid according to the work done.

master

master the whole year, and boarded and lodged at his house, allowing 2s. a week for the same: but, on her examination, she said, that by her contract she thought herself at liberty to play or be absent from her work when and as long as she pleased, but that she was not at liberty to work for any other master. By the court: This case has all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And what her apprehension was, or whether she was paid by the year or by the quantity of her work, was immaterial. *Str.* 1139. 2 *Seff. Cas.* 146. *Burr. Settl. Cas.* 152.

Hired to be
paid for his
work

H. 20 G. 3. K. and Birmingham. The case specially stated was, That *Thomas Baker* was hired in the parish of *Birmingham*, by *John Jennings* a wood screw-maker, for a year, good earn good hire, to work for him and no other master, to make screws, at so much a gross; and this was all that passed upon the hiring: that persons are often hired at *Birmingham* under the terms "good earn good hire," the meaning of which is, that their pay is to depend on their work. *Baker* had no wages. He was to have what he got. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring; and, during that year, sometimes lodged with his master, sometimes in another house in the parish; and when he lodged with his master, he paid him for his diet and lodging. He sometimes absented himself, to drink or play, for a week or a fortnight, and never asked his master's leave for such absence. His master, on his return, was angry and checked him, but always received him again. During such absence, he never worked for any other person. And it is generally understood at *Birmingham*, that persons hired to work in shops, on the above terms, may occasionally absent themselves, but cannot work for another master. The court was of opinion that this was a good hiring and service, so as to gain a settlement. *Douglas.* 319. *Cald. Rep.* 77.

T. 10 G. 3. St. Agnes and Redruth. The father of the pauper contracted with one *Mr. Nankivell* (the pauper being then fifteen or sixteen years of age) for him to work at the said *Mr. Nankivell's* stamps in the parish of *St. Agnes* (which stamps are mills, wherein several labourers, men and boys, are employed in cleansing and manufacturing tin), for one year, at the yearly wages of 5*l.* In pursuance of which contract, the pauper served *Mr. Nankivell*, at his stamps, for the year, by working therein daily, except holidays and *Sundays*, according to the custom of tinnerns. And his

his father received his wages, as he had occasion for it. But, during the year, the said pauper ate, drank, and lodged with his father in the parish of *St. Agnes*, serving Mr. *Nankivell* at his stamps, and in no other capacity, nor ever became a part of his master's family. It was argued, that the pauper did not hereby gain any settlement at *St. Agnes*. That this is rather the case of a journeyman, than of a hired servant. He was resident with his father. He was his own master, except as to performing the stipulated limited service at the stamps. He was only to do that particular service. The master had no right to employ him in any other. And *Sundays* and holidays were absolutely his own, without any controul from the master. But by the court: This was an intire contract for a year, without any exception; and the service was according to the custom of the country. The difference is, where the exception is part of the contract, and where the contract is absolute. The question turns upon this distinction. And they were unanimous, that the pauper by this hiring and service gained a settlement. *Burr. Settl. Cas. 671.*

In the case of *Lidney and Stroude*, T. 6 & 7 G. 2. *Martha Brewer* was hired to *William Wake*, in the parish of *Stroude*, for a quarter of a year, and if her master and she liked one another, she was to continue for a year, and to have 3*l.* for her year's wages. She entered into the said service, and continued therein a whole year, and received the wages of 3*l.* It was argued, that as it was in the election of either party, during the first quarter, to continue or not, she could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year; since the master and the servant did like one another, and a year's service was actually performed under it. *Burr. Settl. Cas. 1.*

So in the case of *Atherton and Barton*, *Ralph Harrison* was hired for a year to *Thomas Barlow* of *Barton*, at 4*l.* a-year wages, with liberty for either party to determine the contract at the end of any quarter of the year, on a month's notice. But no such notice was given, and *Ralph Harrison* continued in his master's service at *Barton* the whole year. The servant declared, at the time of hiring, that the reason of such hiring being made determinable at the end of every quarter, upon such notice, was, that he would not be hired so as to lose his former settlement. But by the court unanimously, This is a good settlement in *Barton*. *Burr. Settl. Cas. 203.*

And

Hiring conditionally, on giving a month's wages or warning.

And in the case of *New Windsor* and *Chepping Wycomb*. The pauper was to be a month upon liking, and to receive 5*l.* a year wages; but the service was to be determinable on either party allowing a month's wages, or giving a month's warning. The servant continued near two years in this service. By the court unanimously: This is a hiring for a year at *Thorpe*, and she gained a settlement there.

Hiring implied.

H. 22 G. 3. St. James's in Poole and *Holy Trinity in Wareham*. Two justices removed *Elizabeth* the wife of *James Simpson*, and their five children, from *St. James's in Poole* to *Holy Trinity in Wareham*; the sessions confirmed the order, and stated specially, That it was proved, that the pauper's husband was born in the parish of *Beer Regis*, and the pauper also proved that her husband was abroad beyond sea, and had been so for two years past, if alive: that to her knowledge he lived in the capacity of an ostler with *Mrs. Lee* in *Holy Trinity in Wareham*, some years deceased, for about two years, where she had seen him brew; but whether there was any hiring relating to such service, was not proved; only that she had heard her husband say, he was settled in the parish of the *Holy Trinity in Wareham*. By lord *Mansfield*: The sessions have drawn their conclusion that he was hired; and I think they have done right. *Buller J.* Though the evidence is slight, there is nothing to contradict it. *Willes* and *Ashburst* concurred. Both orders affirmed. *Caldecott's Rep.* 141.

Service, where no contract appears, gains no settlement.

In the case of *Gregory Stoke* and *Pitminster*. *M. 13 G.* A young woman lived with her grandmother four years, on an allowance of meat, drink, washing, and lodging. But as there appeared no contract between the mother and the girl, and that she might have left her grandmother at any time, it was adjudged not a hiring within the statute. 2 *Sess. C.* 120.

The statute of 8 & 9 *W. 30*, says, *Unless such person shall continue and abide in the same service during the space of one whole year.* What is meant by the *same service*, in this explanatory statute, has occasioned much controversy, as will appear by the following adjudications:

Hiring and service for a year.

In the case of *Dunsford* and *Ridgwick*, *M. 9 Ann.* The court declared, That there ought to be one entire contract, and one entire service for a year, pursuant to that contract. *Foley*, 133.

And, in reciting the above case, *Mr. Blackerby* says, It was then held that there must be one entire hiring, and one entire service in pursuance of such hiring, for a whole year, that must make a settlement. *Blackerby*, 244.

H. 10 W. Overton v. Steventon. Bridget Bayly, before the 25th of March 1697, was a settled inhabitant in the parish of Overton; and, on or about the said 25th of March, contracted with one John Orpwood of Steventon, for the wages of 20s. to serve him from the 25th of March 1697, till Michaelmas then next following; which time she served accordingly. And at the said Michaelmas, Orpwood contracted with her from the said Michaelmas for one year ensuing, for the wages of 30s. And Bridget, according to the last-mentioned contract, remained with Orpwood, till some time in April 1698: in which month, by the mutual consent of the said Bridget and Orpwood, she left her service, and he paid her the proportion of wages then due. The sessions thinking the hiring and service aforesaid, continuing for the time of more than one whole year, to be a good settlement, confirmed the order of the two justices for sending her to Steventon. Of this opinion was the court, and the orders were confirmed. *Burr. Settl. Cas.*

H. 10 W. A female servant was hired for half a year, and served that time. She was afterwards hired for the year, and served half of that. *Rokeby, Turton, and Gould (Holt Ch. J. being absent)* held it to be a settlement; because the statute only intended that the party should serve a year. *L. Raym. 426.* The case of the inhabitants of South Molton.

And in the case of *Tulgrave and Chipping-Warden, E. 27 G. 3, Grose*, justice, observed as follows: As to coupling the services, it was determined soon after the passing of the statute of 8 & 9 W. c. 30, in the case of the inhabitants of South Molton (*Lord Raymond 426.*) that a service for half a year under a hiring for a year, might be joined with a service for another half year, because they were *ejusdem generis*. So in this case, the first hiring and service from November till the Michaelmas following may be coupled with the subsequent one, as they are both of the same nature. *Durnf. and East. 778.*

And in the case of *Brightwell and Westballam, E. 1 G.* There was a hiring and service from three weeks after Michaelmas, and then a hiring for a year, and service for eleven months. The chief-justice said, If there was a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days, that he should adjudge that a settlement. The reason is, because till the last statute was made, a hiring for a year, and forty days service, made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So forty days is a good settlement to an apprentice, in respect to his skill and art; by which

which he is supposed unlikely to become chargeable. So a person who has paid parish-dues, or served offices in a parish, gains a settlement by forty-days, because he is supposed a person of substance, unlikely to become chargeable. But the late act, requiring service for a year, as well as an hiring, we think it sufficient if the words are answered, considering this within the design of the former statutes. 1 *Seff. Cas.* 87. *Foley*, 143.

Judges are sometimes wholly led by precedents; contrary to their own opinion; of which the following case contains an acknowledged instance: *M.* 1 *G.* 2 *K.* and *Aynhoe*. The pauper was hired in *Bicester* from *Christmas* to *Michaelmas*, and served till *Michaelmas*: then he was hired for a year, and served till *Midsummer*. And this was adjudged to gain a settlement in *Bicester*. There were cited for it the cases of *Overton* and *Steventon*, and of *Brightwell* and *Westballam*. Lord Ch. J. *Raymond* said, the case of *Westballam* was express to the point, and he would not break into it; but, if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year. The greater part of the judges thought this case against the statute; but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion. 2 *Seff. C.* 119. *Fol.* 144.

A hiring for a year, and service for a year, will gain a settlement, though the whole service is not under the first hiring.

M. 11 *G.* 2, *Fifthead Magdalen* and *West-Stower*. *William Trim* hired himself to a master at *West-Stower*, from *Midsummer* to *Lady-day*, being three quarters of a year. At *Lady-day* he received his wages of 40s, quitted his master's house, and went to his father's in *Stower*. In about an hour he returned to his master, and agreed with him for a year at 3l. 10s. a year, and lived with him half a year in pursuance of the second agreement. When he quitted his master's house, he had no cloaths but what he wore, except a shirt which he left at his master's house. It was urged that this was no settlement, for that there should be first a hiring for a year, and then a service for a year under that hiring. Besides, here was a discontinuance; the first contract was ended, before the second was entered upon; so that it was not a continuing in the same service. Lord chief-justice *Lee* said, he remembered the resolution was first come into in lord chief-justice *Parker's* time; that a hiring for a year and service for a year were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir *Thomas Powys* (who was just come into the court) very much boggled at it: But

now,

now, said he, the rule is established, that if there is a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be considered as a discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that day. Therefore he remained a servant during the whole time of the completion of his year. *Burr. Settl. Cas. 116.*

The case of *Popham and Ellisfield*, H. 17 G. 3, is exactly similar to the preceding. By Lord Mansfield: There is not the difference of an *iota* between this case and that of *Fifehead*. The ground on which the court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, observed very properly in *Fifehead* case, that upon every new contract there is a sort of discontinuance, and that the law of connecting two hirings within the year, which was now settled, could not be supported, where the first period was suffered to elapse before the second contract was made; if this were otherwise. *Caldercott's Rep. 4.*

E. 28 G. 3. K. v. Sulgrave. The pauper, Daniel Plester, being settled in *Sulgrave*, was hired in February to Mr. Howes of *Stouchbury* till Old Michaelmas following, and served him accordingly. On the Friday before Old Michaelmas his master asked him if he would stay again: the pauper said he would, if they could agree about wages; and asked five guineas, which the master thought too much. The pauper immediately went away; and, having gone about ten yards, returned for something he had forgotten. He then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at Michaelmas, because of your settlement, and I'll give you that fortnight to get what you can; to which the pauper agreed; and he accordingly went to his father's, and stayed a fortnight, during which time he worked for Mr. Chester, in digging sand on Mr. Howes's land, and received from Mr. Chester one shilling a-day; and once or twice during the fortnight he eat at Mr. Howes's. At the end of the fortnight he went to Mr. Howes's, and continued to serve him in *Stouchbury* till Lady-day, when Mr. Howes removed, and

and the pauper with him, to *Cudworth*. Mr. *Howes* soon after died, and the pauper continued to serve Mrs. *Howes* in *Cudworth* till the time when he left her, and he then received his wages up to that time; and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper supposed his master would not have hired him, if he had not agreed to go away for the fortnight. The sessions, thinking the pauper had gained no settlement by this service, confirmed the order of removal from *Westbury* to *Sulgrave*. This case was argued by *Dayrell* and *Lowndes*, in support of the order of removal: and *Erskine* and *Wilson*, against, were stopped by the court. *Ashhurst*, J. The rule established in these kinds of cases is this; where there is a *bonâ fide* exception of part of the time at the hiring, that is not a hiring for a year; but, if there is no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master; and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question, whether it be one or the other, must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is also stated, that, while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight: but the contract was complete before that time, and what passed afterwards can only be considered as a dispensation with the service; for then the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the one shilling earnest was to bind the agreement for a year for five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year, for serving him for a shorter period. If then the contract were complete before any thing was said relative to the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not made on the request of the servant, but on the offer of the master: and it appears that he said it was for the express purpose of preventing the pauper's gaining a settlement. This is not such a reason as the court would give much countenance to. Whether indeed the sessions

sessions might not have determined this upon the ground of fraud, was for their consideration. As it is, there is no occasion to go into that ground, as we are of opinion this was a dispensation with the service. With respect to the servants apprehension, which is stated in the case, that cannot vary the question: we are to decide on the terms of the contract, and not on the apprehension of the pauper. *Buller, J. and Grose, J. of the same opinion. Rule absolute. 2 Durnf. & East. 376.*

M. 19 G. 2. The Parish of Groscombe v. the Parish of St. Cuthbert, in Wells. A servant was hired for, and served a year, in *Groscombe*. He continued to serve there, without any new agreement, for a quarter of a year, when the master removed into a house in *St. Cuthbert's*, where the servant continued for half a year, and then married. The question was, Whether this was a settlement in *St. Cuthbert's*, within the reason of those cases that have held the settlement to be gained where the last forty days service was? The court held it to be a settlement there; for it is still continuing in the same service within the meaning of *stat. 8 & 9 W. c. 30*, though there is no new agreement. And by the whole court: As there was a hiring for a year, and a service for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where it was performed the last forty days. *Str. 1240.*

In the case of *Ivinghoe and Solebury*. A person was hired for a year to one *Knight*, a farmer in *Ivinghoe*, and lived with him half a year. The master then let his farm to one *Smith*, and the servant lived the residue of the year with *Smith* in the farm, without any words passing with respect to dissolving the contract with *Knight*, or making a new contract with *Smith*: and, at the end of the year, the second master paid him his wages. The question was, Whether this shall be deemed the same service, so as to gain a settlement? By *Pratt*, chief-justice, and the court: This is a good settlement. If a master commands his servant to live with another for a certain time, it is a service to the first master. And here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case: for, the contract not being destroyed, he might have brought an action against the master. *1 Sess. Cas. 121. Str. 90.*

The same service, though not with the same master.

E. 15 G. 2. Ladock and St. Enoder. *John Roberts* was hired for a year in *Ladock*. His master dying within the year, he agreed to serve his executor *William Huddy* for the remainder of the year, and did actually serve him during that

Serving the remainder of the year with his master's executor.

that time. By the court: This is a continuance of the same service. The contract was not dissolved by the death of the master, and the servant gained a settlement in *St. Enoder*. *Burr. Settl. Cas.*

Same service in
a different place.

In the case of *K. v. Whitechapel*. *E. 11 G.* A person was hired for five years, to work at a glass-house in *Whitechapel*, at the rate of 10s. a week. He never lodged in his master's house any part of the time, but at another house in the parish. By the court: He has gained a settlement there; for, being hired to serve above a year, and having served and resided in such parish pursuant to such hiring, he has fully complied with the statute; and it is not material where he lodged, so it was within the parish. *8 Mod. 370. Foley, 146.*

And in the case of *Silverton and Ashton*, *T. 12 Ann.* By the court: If a person is hired to a master in one parish, and goes with him into another parish, and serves him for one whole year; the parish he continues last in for forty days before the end of the year, is the place of his settlement; and the reason why the forty days gain him a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued forty days with him unremoveable, he gains a settlement. *Foley, 188. Cas. of S. 23.*

Servant gaining
a settlement
where the mas-
ter has none.

H. 1 G. Bishop's Hatfield and St. Peter's in St. Alban's. Two justices remove one *Langley* from *Bishop's Hatfield* to *St. Peter's*. Upon appeal, the matter was stated specially, that this *Langley* was a huntsman to one *Mr. Arnold*, and that *Mr. Arnold* lived sometimes in *Westminster*, and sometimes at his house in *Northamptonshire*, but that *Mr. Arnold* had no settlement in *St. Peter's*; and that this *Langley* served the last forty days of his year in the parish of *St. Peter's* with his master *Mr. Arnold*: which the justices at sessions thought gained no settlement for *Langley* in *St. Peter's*, and quashed the order of two justices. But the court of King's Bench, upon the order's being removed by *certiorari*, quashed the order of sessions, and held *Langley's* settlement to be in *St. Peter's*, by serving his master *Mr. Arnold* the last forty days of his year there, though his master *Arnold* had no settlement there. *Foley, 197. Str. 794.*

And in the case of *Ilsey and Weybridge*, *M. 15 G. 3.* It was determined, that a groom residing at a public place, where his master had no house nor estate, merely for the purpose of training running horses, gained a settlement at that public place. *Burr. Settl. Cas. 722.*

T. 18 G.

T. 18 G. 3. *Little Marlow and Hedfor.* William Monk was removed from *Little Marlow* to *Hedfor*; on appeal the sessions confirmed the order, and stated specially, That the pauper was hired for a year to lord *Boston*, and served him as a gardener for several years in the parish of *Hedfor*: that ninety-five days before the end of the fourth year, he married a woman of the parish of *Little Marlow*, and from the time of his marriage till the end of that year's service, he lodged with his wife in *Little Marlow* forty nights, but not successively, but did not lodge forty-nights elsewhere after his marriage. It did not appear that lord *Boston* had any property in *Little Marlow*, nor where the pauper lodged the last night of the year's service in which he married. It appears that he did not see lord *Boston* within that year in which he married, nor had any consent to be absent those forty nights; and that he never performed any service in *Little Marlow* on account of his master: that he continued to serve lord *Boston* several years after his marriage. *Dunning* contended, in support of these orders, that the inclination the court has always shewn in favour of settlements, need not be indulged in this case, as the servant had gained a settlement by the first year's service: formerly it was questioned whether the service ought not to be in the same house, and, though it was thought sufficient if in the same parish, it has since been holden, that if a servant continues forty days in a parish in his master's service, the reason he gains a settlement by the forty days is, his coming into such parish with his master, and that the court would not permit him to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him. *Wallace*, in reply, cited a variety of cases to shew that a man is settled where he lodges the last forty days, although not successive; that the *K. v. Castleton* was in point; the only difficulty is, whether the want of the master's knowledge can make any difference. If his master's business is done as well as if he lodged in the family, which the case shews it must have been, it can make none. Lord *Mansfield*: The cases seem to have settled it. The other judges concurred. Both orders quashed. *Caldecott's Rep.* 51.

The same point came in question in the case of *Avening v. Nympsfield*, (H. 21 G. 3.) but was given up by the counsel as being fully settled. *Caldecott's Rep.* 107.

T. 26 & 27 G. 2. *Hanbury and Tardebigg.* The servant was hired for a year at *Michaelmas*, but did not come to his service Absence during the service, but service received again.

POOR: (Settlement by service)

service till three days after *Michaelmas day*, and served till the day after *Michaelmas* in the next year. He was absent about two or three days at a time; in the whole a fortnight, without consent, but was always received again. At going away he agreed to deduct 6s. 6d. from his wages, for the time he was absent. By the court: He gained a settlement by this service. This court has not been so strict in determining upon the service, as they have been upon the hiring. It has often been held, that, though a servant has been absent for a time, yet the master taking him again purges his absence. And there is no difference between an absence in the beginning and the middle of the service; for he is a servant from the time of hiring. *Burr. Settl. Cas.* 322.

In the case of *K. and Ifip*. A person hired for a year, had leave to go and see his mother for one day, when he tarried three days before he returned, when his master took him into his service as before. By the court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service. In the same case it was stated, that the servant was ill for six days, and incapable of any service: and it was objected that therefore he could not gain a settlement, which can only be acquired by a service for a year; but here he did not serve for six days, and consequently there wants so much of a service for a year. But by the court: A servant who thus lies under the visitation of God, which befalls him not through his own default, must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom. Another circumstance in the same case was this: the servant, three or four days before the expiration of his service, desired leave of his master to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return till the time of his service was expired. By the court: This is nevertheless a settlement. The request of the servant is a reasonable request; and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires; if he does, the service in point of law continues, and he gains a settlement notwithstanding. *Cases of Settl.* 129. *Str.* 423.

Illness during
service.

And in the case of *Christ-church* and *St. Mathew's Bethnal Green*. It was held by lord *Mansfield*, That if a master gives his servant leave to go upon any other service, or

to

to be absent for a short time, and pays him his whole wages, this is a good settlement. If the servant is taken ill by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the master is bound to provide for, and take care of the servant so taken ill in his service; and cannot deduct wages in proportion to the continuance of the servant's sickness. And there is no difference whether the accident of sickness happens in the middle or at the end of the year. It is equally the act of God, without any fault of the servant. And, in the present case, the servant's being at Mr. Lemonier's, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof. *Burr. Settl. Cas. 494.*

H. 11 G. 3. Madington and Wilsford. The pauper was hired for a year from *Michaelmas*, and continued in his service till about three weeks before the next *Michaelmas*; when, having been kicked by one of his master's horses, he went home to his friends, about five miles off, without his master's knowledge or asking his leave, to cure his leg; and continued there the remainder of the year, and never returning to his master, except for his wages, some short time after *Michaelmas*; when he was paid the whole, except six shillings, which the master deducted on account of the said absence; which the pauper consented to. The court were of opinion, that the servant gained a settlement by the service here stated. And they thought it within the reason of the determination of the *Illip* case. Here, the cause of his going home to his friends clearly and fully appears to have been to cure his leg, which had been hurt in his master's service, and by a kick from his master's horse. This was a reasonable cause of absence. It did not dissolve the contract, nor hinder his gaining a settlement; and the master ought not to have deducted any part of his wages. *Burr. Settl. Cas. 675.*

T. 8 G. Eastland and Westhorstley. A servant being hired for a year, the day before the year expired, his master told him, that, to prevent his gaining a settlement in that parish, he should go away immediately. The servant refused so to do, insisting to serve out the year; whereupon the master turned him out of doors. The court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Str. 526.*

E. 18 G. 3. St. Faith under St. Paul's and St Bartholemew by the Exchange. Case stated, that the pauper *Ursula Owen* was hired for a year by Mr. *Hesbuysen* on the 11th of June 1771: that in April following, her master told all his

Turning a servant away fraudulently to prevent his gaining a settlement.

Discharging a servant, and paying the full wages, before the expiration

of the year, on account of the master retiring from London into the country.

servants that he was going to live at *Manchester*, but knew not exactly the time; and that they might look out for services, or continue with him till he went, as they chose: that the pauper continued with her said master in the parish, till the 4th *June* following, when he paid her the whole year's wages and half a guinea over, and left *London* the same day: that his going on that day was a casual matter, and if he had remained in *London*, he should have continued the pauper in his service, as she was a good servant: that the pauper went into a new service two days after her master left *London*. That the servant in this case having entered into a new contract, and being in the act of gaining a new settlement for the second year, during the lapse of the first, to hold this a settlement would be to allow the pauper to be gaining two settlements at the same time under different hirings. But by lord *Mansfield* and the court: The only question is, Whether the servant continued *bona fide* in her service during the whole year? There is indeed a distinction between exceptions from the contract, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *bona fide*, it can make no difference when the servant is engaged, or where; or whether the service be in the same or another occupation: she quitted her service at the desire of her master, and received half a guinea beyond her wages, as an equivalent no doubt for her board. It was accidental, and a favour to her master. Fraud viciates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she came from a distant country and had no other settlement, shall she lose her only one which she deserves so well? *Caldecott's Rep.* 48.

Master becoming bankrupt before the end of the year.

T. 28 G. 3. K. v. St. Andrews, Holborn. *Mary Robinson* was hired for a year, and continued in her service till within four or five days of the end of the year, when her master becoming a bankrupt, and the messengers taking possession of the house, her mistress discharged her, paying her the whole year's wages. This case was not argued, the court being clearly of opinion, that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement by such hiring and service. *2 Durnf. and East.* 627.

Parishes exempted.

The 13 G. 2. c. 29, enacts, That servants in the *Foundling hospital* shall not, by their service there, gain any settlement in the parish where the said hospital is situate.

And servants in the *Magdalen hospital* (for the reception of penitent prostitutes) shall not, by their service in such hospital,

pital, gain a settlement in the parish where such hospital is situate. 9 G. 3. c. 31.

8. Settlement by continuing forty Days after Notice.

The 13 & 14 C. 2. c. 12, enacts, That on complaint by the churchwardens or overseers, within forty days after any person shall come to settle in any tenement under 10^l. a year, two justices (1 Q.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least.

Who may be removed on complaint within forty days.

But by the 1 Jac. 2. c. 17, Such forty days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. s. 3.

Such forty days to be from notice given.

And the 3 W. c. 11, enacts, That the said forty days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which notice in writing, the said churchwarden or overseer shall read, or cause to be read, publicly, immediately after divine service, in the church or chapel, on the next Lord's day, when there shall be divine service in the same. And such churchwarden or overseer shall register, or cause to be registered, the said notice in writing, in the book kept for the poor's account. s. 3.

And from the publication of such notice in the church by 3 W. c. 11.

By the same statute, s. 5, If any churchwarden or overseer shall refuse or neglect to read, or cause to be read, such notice in writing as aforesaid, he shall, on proof thereof by the oath of two witnesses before one justice, forfeit for every offence 40s. to the party grieved, by distress, by warrant directed to the constable of the parish or town where the offender dwells; and for want of sufficient distress, the said justice shall commit him to the common gaol for one month. And any churchwarden or overseer who shall refuse or neglect to register, or cause to be registered, such notice in writing, shall, on the like conviction, forfeit 40s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, the said justice shall commit the offender as aforesaid, for the time aforesaid.

Penalty on the churchwarden or overseer neglecting to read and register such notice.

Exception re-
specting sol-
diers, seamen,
&c.

But no soldier, seaman, shipwright, or other artificer or workman in his majesty's service, shall acquire any settle-
ment in any parish, port-town, or other town, by delivering
and publication of notice in writing, unless it be after a dis-
mission out of the service. *f. 4.*

Not to extend
to a man's own
estate.

In any tenement under 10l. a year] That is, as farmers or
tenants thereof; therefore a man's coming to settle upon
his own estate is not within the act.

The forty days
inhabitan-
cy need not be
successively.

Last legally settled for forty days] *H. 10 G. K. and the
inhabitants of Cirencester.* It was stated, that an apprentice
was bound in the parish of *A*, and lived there off and on for
three quarters of a year. It was objected that this was no
settlement, since he might not inhabit forty days together.
It was held that living forty days successively was not neces-
sary; and Mr. justice Fortescue said, That living forty days
off and on, is making the case stronger than living forty
days together in a parish. By the court: The order for
making it a settlement was confirmed. *Str. 579.*

And in the case of *Sowton and Sydbury, H. 12 G.* It was
held by the court as a point indisputable, that it is not ne-
cessary upon this statute, that the inhabitan-
cy shall be for
forty days successively. *Andr. 345.*

Who are settled
without notice
in writing.

By the said statute of 3 *W. c. 11*, Persons executing a
public annual office, or paying parish rates, or being servants
for a year, or apprentices by indenture, shall thereby be set-
tled without notice in writing. *f. 6, 7, 8.*

And indeed all persons not removeable may become set-
tled equally without giving notice as with it; for the notice
is only intended where the person is removeable; if he is
not removeable, the notice is to no purpose.

A settlement,
by continuing
forty days after
notice, is sel-
dom obtained.

This kind of settlement, by continuing forty days after
publishing notice in writing, is however seldom obtained;
and the design of the acts is not so much for the gaining of
settlements, as for the avoiding of them, by persons coming
into a parish clandestinely; for the giving notice is only
compelling the parish to remove. But, if a person is so si-
tuated, that it is doubtful whether he is actually removeable
or not, he shall, by giving notice, compel the parish either
to allow him a settlement uncontested, by suffering him to
continue forty days; or, by removing him, to try the right,
3 Burn. 485.

9. Settlement by Marriage.

It was formerly somewhat doubtful what should be deem-
ed a sufficient marriage, by which a woman should acquire
a set-

a settlement; and the courts have been favourable in admitting marriages, though not strictly solemnised according to the laws of the church; but the statute of 26 G. 2. c. 33, enacts, That after *March 25, 1754*, all marriages (except in *Scotland*, and except the marriages of Jews and quakers, where both the parties are Jews or quakers respectively) which shall be solemnised without licence or publication of bans, or in any other place than a church or public chapel (unless by special licence from the archbishop of *Canterbury*) or without the consent of parents or guardians (where either of the parties, not being a widower or widow, is under the age of 21 years) shall be null and void to all intents and purposes.

Or in any other place than a church or public chapel where bans of matrimony have been usually published] In the case of *King's Norton and Northfield, E. 21 G. 3.* It appeared, That the pauper *Abigail Jones*, intermarried with *Joseph Jones*, at *Buery Hill chapel*, in the parish of *Kingswinford* in the county of *Stafford*, which was erected in the year 1765 (eleven years after the passing of the said statute.) Lord *Mansfield* declared, The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. *Douglas, 634.*

Soon after this determination, an act was made the 21 G. 3. c. 53, for making all marriages which had been solemnised in any parish, church, or public chapel erected since the statute of the 26 G. 2. and consecrated, valid in law; and to exempt the clergymen who had solemnised such marriages from the penalties of that statute.

Under the age of twenty-one years] *Chilham and Preston. M. 33 G. 2.* Two justices removed *Edward Young*, *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Feversham*, both in *Kent*. And the sessions confirmed, in all points, the order of the two justices. The case, as stated to appear to the sessions was, that the said *Edward Young*, being legally settled in *Preston*, and (not being then a widower) was on the 25th of *January 1758*, without the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury* (who was then settled in *Tenham*, and who is removed to *Preston* by the said order, as the wife of the said pauper); the said *Edward Young* being then an infant of 20 years; and that afterwards, *Rebecca* was brought to bed in *Chilham*, of the said *Mary*, removed by the order. It was argued in support of these orders, that the word *void* in the act may be construed *voidable*; and that it is highly unreasonable,

Marrying under age without the consent of parents or guardians.

that a virtuous young woman and her innocent children should be turned adrift, and be considered as a whore and bastards, without having any opportunity of contesting so severe a judgment against them : therefore that this marriage ought to be avoided by a sentence in the ecclesiastical court ; and not in a collateral method, by an *ex parte* order of justices, made without hearing them or any person on their behalf. By lord *Mansfield* chief-justice : This point will admit of no manner of doubt. There is this plain distinction between things *void* and *voidable*. Where the law makes a thing void for the benefit of the parties concerned, they may waive that advantage if they please. But the marriage act is avowedly made against both the contracting parties, and therefore they shall not waive the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute. And by the whole court : Let the order be quashed as to *Rebecca* and the child, and confirmed as to the pauper *Edward*. *Blackst. Rep.* 192.

H. 26 G. 3. Stanton upon Hine Heath and Hordnett. *Mary Miles* and *Ann* her infant daughter were removed from *Stanton* to *Hordnett* ; the sessions confirmed the order, and stated the following case : That *Mary Miles*, an illegitimate child, was born at *Hordnett*, and married on the 10th *January* 1782, she being then under twenty-one years of age, to *Richard Teece*, who was born at *Stanton*, also under twenty-one years of age, and illegitimate ; that his putative father died in 1779, and his mother in 1764. The putative father of *Mary* died several years before her marriage, and her mother in 1772 married *Richard Lowe*, who as well as his wife are still living. Neither *Richard Teece* nor *Mary Miles* had ever any guardians appointed, nor was any consent given to their marriage by any person acting in that character, nor by the parents on either side ; but the said *Richard Teece*, who applied for a licence, swore that the parties were both of age. The question for the opinion of the court turned on the validity of this marriage. After hearing counsel on both sides, lord *Mansfield* said, the question is, What is the law ? The meaning of the act [26 G. 2. c. 33.] is, that where there is the consent of a father, or guardian lawfully appointed, or of a mother, or guardian appointed by the court of Chancery, the marriage shall be valid ; but here there was no consent by any one ; consequently, in my opinion, it is void by the marriage act. There is no reason to except illegitimate children, for they are within the mis-

mischiefs intended to be remedied by the act. By the court ; Both orders confirmed. 1 *Durnf. & East.* 96.

The statute of 26 G. 2. having left the passage open into Scotland, many persons have found their way thither to be married. And there has been diversity of opinions concerning the validity of such marriages. But whether clandestine marriages in Scotland, of English parties, who resort thither to evade the *English* law, shall be sustained in *England*, has been doubted. And very learned men have questioned, notwithstanding such marriages are valid by the law of Scotland, whether they are effectual in *England*.

Doubts entertained of the validity of a clandestine marriage in Scotland.

No case of this kind had for a long time been litigated in *England*, except one of a marriage at *Ostend*, which came before lord *Hardwicke*, who ordered it to be tried in the Ecclesiastical Court : The young man, however, came of age, the parties were married over again, and the matter was never brought to trial. But in *Buller's* law of *Nisi prius*, p. 113, there is a short note of a cause wherein this point was afterwards determined, upon an appeal to the delegates : viz. *Compton and Bearcroft*, 1 December 1768. The appellant and respondent, both *English* subjects, and the appellant being under age, ran away without the consent of her guardian, and were married in *Scotland* ; and on a suit brought in the Spiritual Court to annul the marriage, it was holden that the marriage was good.

How decided,

In the case of *Stockland and Charland*, T. 2 G. 3. The court refused to receive the testimony of the father *John Moes* to prove the bastardy of the pauper his son, respecting his settlement, by swearing that he was never married to the mother.

What evidence is admissible respecting a settlement.

It seems a good general rule, that a woman marrying a husband who has a known settlement, shall follow the husband's settlement. And though in the case of *Upbottery and Dunkswel*, M. 1 G. it was held, that the wife shall not gain a settlement with the husband till she hath lived with him forty days unremoveable as part of his family ; yet afterwards, in the case of *K. and Pinceborton*, M. 3 G. it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's and Eversley Blackwater*, H. 10 G. the widow was removed to the deceased husband's settlement, though she had never been there ; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Cas. of S.* 89. 1 *Sess. C.* 10. 2 *Sess. C.* 112.

Wife to follow the husband's settlement.

A wife

Wife cannot
gain a settle-
ment without
her husband.

A wife can gain no settlement separate and distinct from her husband, during the coverture: as in the case of *Aythrop Roding and White Roding*, M. 30. G. 2. The wife, after the husband was run away, went to live upon a copyhold of her husband's, where he had never resided; and it was held that, though she might not be removed from thence, yet, (her husband being living) she could not thereby gain a settlement. *Burr. Sett. Cas.* 412.

Where the hus-
band has no
settlement.

It seems agreed, that if a woman marries a husband who has no known settlement, she does not lose that settlement which she had before marriage. But the great point of difference has been, whether such settlement continues to her during the coverture, or is suspended during her coverture, and only revives after the husband's death.

After the *decease* of the husband, who had no settlement, it has been adjudged as follows:

Husband's set-
tlement not
known.

A single woman was married to a man who is since dead, but his settlement was not known. By the court: Her settlement before marriage stands. *K. and Chiddingstone*, H. 12 G. Str. 683.

A foreigner.

A woman married a foreigner, and her husband dies. By the court: She must be sent to the place of her settlement before marriage.

M. 1 G. Uphottery and Dunkswell. A woman settled in *Dunkswell* married a vagrant whose settlement did not appear, who went to *Uphottery*, and died there. By the court: Where it is not known that the husband had any legal settlement in his lifetime, the marriage shall not put her in a worse condition than she was before, and she shall not lose her former settlement. *Cas. of S.* 89.

During the life of a husband who has no settlement, the following decisions have been made:

A woman
married to an
Irishman.

M. 3 G. St. Giles's and St. Margaret's. *Sarah Etherington* was settled at *St. Giles's*, and married an *Irishman*. By the court: The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Cas. of S.* 98.

A Scotchman.

And so it was determined, in the case of *Dunsfold and Wilsbrough Green*; where a woman, who was settled at *Wilsborough*, married a *Scotchman* who had gained no settlement in England. *Foley* 249. *Cas. of S.* 31.

Though by the 39 *Eliz. c. 4. s. 6*, A *Scotchman*, if a vagrant, shall be sent to the bordering counties of Scotland; yet it says nothing of his family,

By

H. 12 G. K. and Westerham. The order specially stated by the sessions was this: It appeared to the court, by the testimony of *Elizabeth Pinchen*, that she was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pinchen*, who was born in *Wiltshire*, but in what place or parish he had a settlement he never informed her, nor does she know; but that he is run away, and still living, for what she knows. By the court: Whether the husband be living or dead, signifies nothing. For, unless it appears that he has a settlement, the woman must be sent to the place of her settlement before marriage: for supposing the husband was born upon the high seas, or in *Ireland*, or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved. *Foley 252. Burr. Settl. Cas. 368.*

But a very contradictory decision has been made in the case of *Stratford and Norton*; wherein an *Englishwoman* had married an *Irishman* who had no settlement in *England*: on which *Lee*, chief-justice, declared, It is now a settled point, that by marriage the woman's settlement is suspended, whether the husband has or has not a settlement; for otherwise the justices might separate the husband and wife; and therefore to have made the order of justices good, who had removed the wife to the place of her settlement before marriage, it should have appeared that the man was dead. *19 Vin. 376. Burr. Settl. Cas. 122.*

The contrary doctrine however seems to prevail; as in the following case: *H. 28 G. 2. St. John's Wapping and St. Botolph's Bishopsgate.* *Eleanor Kinley* having gained a settlement in *St. Botolph's* parish by hiring and service, married *Thomas Kinley*, an *Irishman*, who had no settlement in *England*. About two years ago the husband entered on board a man of war bound for the *West Indies*, but *Eleanor* about two months ago heard he was living; and the question was, Whether the settlement which she had before marriage ceased, or was in suspense during the coverture, and she should be looked upon as a casual poor; or whether she should be sent to the place of her settlement before marriage? After full consideration, *Rider*, chief-justice, delivered the opinion of the court: 1. It is certain that *St. Botolph's* was once her settlement, and that is not disputed. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired; and there is no case

case to be found, where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, Whether she gained any new settlement by marriage, but whether her *old settlement* was discontinued by her marriage with a person that had none? It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I admit that the case of *Stretford* and *Norton* is not to be distinguished from the present, and is against our present opinion. To be sure we should have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I know not; but there are at least four authorities the other way (which perhaps might not then be cited) and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains; having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him. *Bur. Sett. Cas.* 367.

M. 14 G. 2. Ironaſton and Painewicke. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King* had intruded into *Painewick*, two justices removed her to *Ironaſton*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order. It was moved to quash these orders. The objection was, that the wife was removed without the husband, and that this amounts to a divorce between the man and his wife. But the court over-ruled the objection; for how does it appear that the husband was not at *Ironaſton* at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of. *Bur. Set. Cas.* 153.

Though it is generally true, that no settlement shall be good which is brought about by fraud, yet there are exceptions; for if a marriage takes effect by such stratagems as follow, the settlement is good; though the contrivers are liable to prosecution:

T. 7 G. 3. K. v. Tarrant. On shewing cause why an information should not be granted against an overseer of the parish of *Hewith*, for procuring *Richard Few*, a poor man
of

of the parish of *Wilcot*, to marry *Elizabeth Swanton*, a single woman with child by a bastard, in order to get the bastard settled in the parish where the husband was settled. The rule was made absolute for an information. *Burr. Mansf.* 2106.

And in the case of *K. and Watson*, *M.* 17 G. 2, An information was granted against *Watson* and others, for procuring one *Vine*, a soldier, having a settlement in the parish of *Brill*, to marry a poor woman who was an idiot, and chargeable to the parish of *Dorton*, by giving him 10*l.* and a fat hog for marrying her, whereby she became chargeable to the said parish of *Brill*. 1 *Milsf.* 41.

And in the case of *K. v. Edwards*, *M.* 11 G. The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, to induce him to marry a poor lame woman of their own parish, and so conspiring to settle the woman in the other parish, where the husband was settled. By the court: If there is a conspiracy to let lands of 10*l.* a year to a poor man, in order to gain him a settlement, or to make a certificate-man a parish officer, or to send a woman pregnant with a bastard child into another parish to be delivered there, in order to charge the parish with the child; these are certainly crimes, indictable. But this indictment was quashed for want of averment, that the woman was last legally settled in the parish relieved by her marriage. 8 *Mod.* 321. 1 *Self. Cas.* C. C. 165.

10. Settlement by Estate.

The 13 and 14 C. 2. c. 12, enacts, That on complaint within forty days after any person shall come to settle in any tenement under 10*l.* a year, two justices may remove him to where he was last legally settled for forty days. Tenant under 10*l.* a year two justices may remove.

And the 9 and 10 W. c. 11. enacts, That no certificate person shall gain a settlement but by renting 10*l.* a year, or executing an annual office. Settlement by certificate person.

[Under 10*l.* a year.] But a person, having an estate of his own, though under 10*l.* shall gain a settlement thereby under this statute; as in the case of *Harrow and Edgeware*, *E.* 11 Ann. A person who was settled at *Harrow*, purchased a copyhold estate for life in the parish of *Edgeware*, lived therein four or five years, and then died. This being a tenement under 10*l.* a year, the question was, upon the 13 and 14 C. 2. Whether this gained a settlement at *Edgeware*? Adjudged that less than 10*l.* a year, of a person's own, gains a settlement. The statute means renting 10*l.* a year.

Edgeware? It was argued, that the statute has always been held to mean an estate which a man takes to farm, and not one of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10*l.* a year. And by *Parker*, chief justice, and the court: Where a person has an estate for life, or an estate of inheritance of his own, that gains a settlement, though less than 10*l.* a year; for he cannot be removed, and, if he cannot be removed, he certainly gains a settlement. *Foley*, 257.

Where a man lives upon his own, the law will not unsettle him.

T. 7 G. 2. *Sundriss* and *Hever*. *Thomas Perch*, by indenture demised to *Thomas Gates*, the father, a cottage at 5*s.* a year, which was the full value, for ninety-nine years: the lessee held it till his death, and devised it to *Thomas Gates* his son. The question was, Whether the son, as executor, being intitled to the term, shall gain a settlement by inhabiting in such cottage? By the court: Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: persons to be removed under the statute of C. 2. are those who wander from place to place, and not those who live upon their own estate; and adjudged that he gained a settlement. 1 *Sess. C.* 200. *Str.* 983. *Burrow's Settl. Cas.* 7.

A cottage built on the waste, not rated nor paying taxes, possessed twenty years gains a settlement.

In the case of *Bitton* and *St. Philip Jacob*, M. 9 G. 3. The pauper *George Battman* built a cottage upon the waste without permission of the lady of the manor; was not rated, nor paid any taxes, but continued nineteen years and an half in possession. About twenty years ago the pauper *Battman* was turned out of possession of this cottage by an ejectment brought by a person claiming the same, under a mortgage thereof made by the said *Battman* for 15*l.* and some time after that (which was more than twenty years ago), *Battman* and the mortgagee sold the cottage to one *Williams* for 28*l.* and *Battman* had 5*l.* part of the purchase money. It was urged, that this gained no settlement to *Battman* the pauper: that he had no right to this cottage, either legal or equitable. He had no leave from the owner of the soil, to erect it. He never was rated, nor paid any taxes for it. The value of this cottage is not stated. If he had purchased it, for a consideration under 30*l.* it would not have given him a settlement after he ceased to inhabit it. But here he has only stolen it: and surely he ought not to be in a better condition as a thief, than he would have been as a purchaser. If it were admitted, that twenty years possession would make a title, yet no possession is here stated. And the court cannot presume it. The possession expressly here stated falls short of twenty years. It is only nineteen and a half. But the court were all of opinion, that it appeared to be a possession of more than

than twenty years. He was himself in possession nineteen years and an half; and the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement. *Burr. Settl. Cas.* 631.

A person possessed of a lease for years dying intestate, the question was, Whether the next of kin shall be said in law to be settled there? It was held not; he has only a right, which he must pursue by taking out letters of administration; and no right is vested in him till that is done. *E. 3 G. South Sydenham v. Lamerton. Cas. of S.* 103.

Next of kin must take out administration to gain a settlement.

M. 4 G. Mursley and Grandbournough. Sir John Forrescue demised a cottage of 20s. a year to one Eden for ninety-nine years, reserving 12d. rent: Eden assigns the term to one Gadden in trust for his wife for life, and then in trust for his son during the remainder of the term: the wife dies: then the son dies, leaving a wife, who, as administratrix to her husband, became entitled to this term, and she grants this cottage for twenty-four years, excepting two rooms, in which two rooms she lives, and marries one John Chapel. The question was, Whether Chapel, as husband of an administratrix, who was entitled to the trust of a term only, and being entitled to a chattel in another's right only, was removeable by the 13 & 14 C. 2.? And by the court, he is not; this is not a taking of a tenement under 10l. for the 12d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own, is the way to make him chargeable, for he may not be able to let it; therefore the orders which adjudged this to be no settlement were quashed. *Str.* 97. 1 *Seff. C.* 122.

Husband of an administratrix, entitled to the trust of a term, not removeable.

E. 14 G. 3. Eversholt and Woburn. The paupers, (who were two sisters) resided at Eversholt under a certificate from Woburn. A person entitled to a long term of years in a cottage in Eversholt, after having devised to Andrew Powell, son of their father William Powell, adds, that "it is also my will and pleasure, that the said William Powell (their father) and his wife and children, shall have free liberty and power during their natural life to dwell in it." And accordingly, William Powell and his wife, and their said son Andrew, and the two daughters (the paupers) resided in it till William Powell's death. By the court: The settlement of the daughters (the two paupers) is in Eversholt. *Burr. Settl. Cas.* 851.

E. 14 G. 3. South Stoke and Painswick. The widow of a person who died seized of a house and orchard in South Stoke, entered and resided therein for seven years, without any

any assignment of dower, and then married a second husband, who resided in the said house with her about two years, and then died. It was argued, that she hereby gained no settlement, and consequently could communicate none to her second husband. It is like the case of a next of kin, who cannot acquire a settlement before administration granted. A right of dower is no estate at all; nor is it like an equitable estate: it is like a title to an action. By lord *Mansfield*, and the court: The mere right of dower gained a settlement to *herself*, she having by *Magna Charta* a right to remain forty days in the house; and, being irremovable for forty days, she thereby gained a settlement; but she could not communicate it to her second husband; as a tenant in dower has no right to enter till dower is assigned. *Burr. Set. Cas. 783.*

Purchase under 30l. shall not give a settlement, only while the purchaser inhabits such estate.

The 9 G. c. 7. enacts, That no person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase does not amount to 30l. *bona fide* paid; for any longer or further time than such persons shall inhabit in such estate, and shall be then liable to be removed to such parish or place, where he was last legally settled before the said purchase and inhabitancy therein.

As a purchase under 30l. will not settle the purchaser for any longer time than he continues in the purchased estate, it will not settle any of his children by any derivative settlement from him; as in the following case:

H. 4 G. 3. K. v. the inhabitants of Salford. On a motion to quash an order of sessions made for quashing an order of two justices made for the removing of *Peter White* the younger, and *Mary* his wife, from the parish of *Salford*, in the county of *Oxford*, to the hamlet of *Over Norton* in the parish of *Chipping Norton*, in the same county, a rule to shew cause was obtained. The case was as follows: *Peter White*, the father of the pauper, being settled in *Over Norton*, in 1726, for the consideration of 29l. purchased a tenement in the parish of *Salford* of one *J. L.* whose wife was seized of the inheritance in fee-simple of the said tenement, but never joined with her husband in conveying it, nor had *L.* her husband any estate in the said tenement, but in right of his said wife; and his said wife survived him, and died about ten years after him. *L.* the husband, died thirty years ago, and *Peter White* the pauper's father, has lived in, and possessed uninterruptedly, the said tenement ever since he so purchased it, and still lives there; and his son, the

the pauper, was born there in or about the year 1730, and lived with his father as part of his family in the said purchased tenement till within three years, when the said pauper married, and left his father's family, and lived in a separate tenement in *Salford* aforesaid, but never gained any settlement but what he derived from his said father. After hearing the arguments of the counsel on both sides on shewing cause on this rule, the court gave their opinion. Lord *Mansfield*. We are of opinion that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting the purchased premises: so that the father's settlement was only temporary, and did not extinguish his settlement at *Over Norton*; and the only settlement which the son could derive from his father was at *Over Norton*; for there could be no derivative settlement from the father at *Salford*, the father himself having no settlement there, but being only irremovable from his own estate. By the court: Let the order of sessions be quashed, and the order of the two justices be affirmed. *Bur. Settl. Cas.* 516. *Blackst. Rep.* 433.

But in the case of *Marwood and Kentisbury*, *H. 29 G.* 2. On a motion to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas Conibear* and *Mary* his wife, from *Kentisbury* to *Marwood*. The case was as follows: The father of the said *Mary* had conveyed to her, in consideration of natural love and affection, a cottage, garden, and plat of ground at *Kentisbury*, for the residue of a term of ninety-nine years, then determinable on the death of one *Joan Slocombe*, the consideration of which purchase originally (*viz.* in 1689) amounted only to twenty shillings. *Mary* and her husband entered upon the premises, and continued thereon for several years, till the lease determined by the death of the said *Joan*. Upon which they were removed from *Kentisbury* to *Marwood*. It was urged, that, as the original consideration money was under 30*l.* and no consideration had been paid on the subsequent conveyance to the daughter, it was such a purchase as the statute of 9 *G. c. 7*, intended not to gain a settlement. To which it was answered, that the intention of the legislature was not to extend the law to every kind of purchase, according to the extensive legal sense of the word *purchase*; the very words importing that it is to be a *pecuniary* purchase, or where an equivalent is paid for an estate, and not where a person comes to an estate by will, donation, settlement on marriage, or

In cases of descent a settlement is gained, though the original purchase be under 30*l.* value.

the like. But if the word *purchase* were to be taken in that extensive legal sense, yet there is a difference in the present case; and the true question will be, what estate the *husband* had: for if the husband did not take by purchase, it will be of no consequence how the wife took; because he will gain a settlement by the inhabitancy, and she cannot be separated from him. He is in by act of law, in the right of his wife; and not by any act, consent, or traffick of his own. By *Rider*, chief justice: If I had any doubt, I would not give an opinion now. This is not a *purchase* within the meaning of the act. The word *purchase* is not to be taken in the largest extent of it, but is confined to cases where a *pecuniary* consideration is paid. Otherwise no device, gift, or settlement on marriage, would gain a settlement, unless there was a pecuniary consideration paid. The intention of the act was, to prevent settlements by purchases for small *money* considerations. In the present case, the husband is not to be considered as the *purchaser*, and therefore he acquired a settlement in *Kentisbury*. And by the court unanimously, the orders of the justices were quashed. *Burr. Settl. Cas.* 386.

So in the case of *Ilmington* and *Mickleton*, T. 6 G. 3. *Elizabeth Stanley* purchased a leasehold tenement in the parish of *Mickleton*, for 6*l.* for the remainder of a term of one thousand years. She resided upon the premises about nine years, and then was married to *Theophilus Evans*, who resided with her upon the said tenement about sixteen years, then he died; and after his decease, she continued upon the premises for several years, and at last sold the same for 6*l.*; and after such sale, was removed by order of two justices to *Ilmington*, the place of her husband's settlement before their intermarriage. And the sessions, upon appeal, confirmed that order. It was moved to quash these orders. On shewing cause, it was urged in support of the orders, that this was a purchase by the wife, clearly within the words of the statute, under the value of 30*l.* and the husband had no claim to it, but by virtue of that purchase. The term survived to the wife, on her husband's death. And if he had survived her, he could not have had it without taking out administration to his wife. On the contrary, it was answered, that this, though a new case, yet was within the reason of the former cases. In cases of *descent*, a settlement is gained, though the original purchase be under 30*l.* value: and there is as much reason why a settlement should be gained in the present case. This woman had an estate vested in her, when *Evans* married her; which, upon the mar-

marriage, vested in him. The husband gained a settlement in *Mickleton*, by forty days residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the court. And both the orders were quashed. *Burr. Set. Cas. 566. Blackst. Rep. 598.*

E. 29 G. 3. K. v. The inhabitants of Ufton. Two justices removed *John Henwood*, his wife, and three children, from *Ufton, Berks*, to *Mortimer, Southampton*: and the sessions on appeal discharged the order of removal, subject to the opinion of the court of King's Bench, on the following case: *John Henwood*, the pauper, originally settled at *Ufton*, came to reside with his father *John Henwood*, about twenty-three years ago, on a cottage and premises at *Mortimer, Hants*, which his father had occupied several years. By indenture or deed of feoffment, dated 10th October 1766, with livery of seisin indorsed, and duly executed, in consideration of natural love and affection, and of 10*l.* to him paid by the pauper, *John Henwood* the father granted, enfeoffed and confirmed the said cottage, &c. to the pauper in fee. About three years and a quarter afterwards the pauper obtained from the parish of *Ufton* a certificate dated 1st January 1770, duly signed, certified, and allowed, acknowledging that he and his wife and family were inhabitants legally settled in *Ufton*. And the pauper afterwards occasionally received relief from *Ufton* during his residence in the cottage at *Mortimer*. The father of the pauper lived with the pauper upon the premises till his death, which happened about eight years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises till the year 1788. The pauper by lease and release, dated the 15th and 16th of February, 1788, conveyed the same premises to *John Stert* for 50*l.*; which sum appeared upon evidence to be a satisfaction for a debt due for necessities provided by *Stert* for the pauper and his family, and for money lent. The pauper being afterwards turned out of possession by *Stert*, to whom after the sale he had become a tenant, returned to *Ufton* and was removed to *Mortimer*. *Lanc.* in support of the order of sessions, contended that this was a pecuniary purchase within the statute of 9 *Geo. c. 7.* and being for less than 30*l.* conferred no settlement. No case has yet been determined to be taken out of the statute where money passed as part of the consideration. If the conveyance had been made in consideration of the money alone, there could have been no doubt. Then the addition of the words "natural love and affection" cannot vary the case, because they are as much

A conveyance from a father to his son in consideration of natural love and affection, and of 10*l.* is not a purchase within the stat. 9 *G. c. 7.*

A donation cannot be a purchase.

words of course in a conveyance from a father to a son as the supposed consideration of 5s. in executing conveyances to trustees. The cases hitherto determined on this head of settlement-law do not apply. If this had merely been a conveyance from one part of a family to another, without any other real consideration than natural love and affection, as in *K. v. Marwood*, *K. v. Ingletón*, and *K. v. Aston Underhill*, it would not have been a purchase within the statute: but it has never been held that a purchase for a mixed consideration is not within it; and this seems clearly to fall within the mischief intended to be remedied by the statute. But though the court should think otherwise, on that part of the case, yet the certificate granted by *Upton* estops them from saying that the pauper was not legally settled there. A certificate is conclusive on the parish granting it. In *Honiton v. St. Mary Axe*, it was said, that before the statute a certificate was only evidence of a private undertaking between the parishes in the nature of a contract, but that now it is a solemn acknowledgment like the cognizance of a fine. And in this case the pauper actually received relief several times since the purchase in *Mortimer*. *Bower* and *Milles* on the other side were stopped by the court. Lord *Kenyon*, Ch. J. There is nothing in either of the points made at the bar; the first of which has been settled these forty years, and the other near a century past. In *K. v. Marwood* it was contended that purchase, under the 9 Geo. c. 7. was to be understood as contradistinguished from descent; as in a former case upon the subject. But the court exploded that idea; and said that the legislature only intended to prevent persons, who made small purchases for pecuniary considerations, from gaining a settlement; but that donations from a father to his child did not come within the statute. Now in this case we are bound to take notice that this conveyance was in consideration of natural love and affection as well as 10/. And we cannot suppose that 10/. was the real value of the estate, for there are circumstances in the case to shew the contrary: the case itself states that it was afterwards sold for 50/. Perhaps the 10/. was taken, because the father had some other child, upon whom he wished to bestow something arising out of this estate, and he took this mode of doing it. This, being a donation from a father to a son, is clearly not a purchase within the 9 G. c. 7. notwithstanding part of the consideration was in money. On the other point, not the smallest doubt can be entertained: for, though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at *Mortimer*.

Mortimer. Ashburst, J. and Buller, J. assenting, order of sessions reversed. 3 Durnf. and East, 251.

But in the case of *Tedford and Waddingham, T. 8 & 9 G. 2.* where 39*l.* had been actually paid for the premises, (*viz.* 9*l.* by himself and 30*l.* by another person on his account.) It was adjudged, by lord *Hardwicke* chief-justice, that the act of 9 *G. c. 7.* does not extend to any case where the consideration amounts to 30*l.* His lordship observed, that the consideration was 39*l.* and was *bona fide* paid to the vendor. And it would be pretty hard to say, that the justice had a power upon this act to enquire whether or no the purchaser borrowed the money: it is a common case to borrow money to make up the price; and from the facts stated here is not sufficient evidence of fraud. *Burr. Settl. Cas. 57.*

E. 13 G. St. Paul's Walden and Kempston. A special order was stated at sessions: a person purchased a copyhold tenement in *St. Paul's Walden*, which, with the fine and fees paid to the court, amounted to 30*l.*; and it appeared by the same order that the officers of the parish of *Kempston* had given him 40*s.* towards paying his fine and fees. It was therefore insisted that it was fraudulent and not a good purchase within the statute, sufficient to gain a settlement, as it appeared clearly that the parish-officers of *Kempston* had advanced the sum of 40*s.* to get rid of the purchaser, and quarter him on the parish of *St. Paul's Walden*, by thus assisting him in acquiring a settlement there. But, by the whole court: We cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed. *Foley, 238.*

Where money is advanced by another parish to complete a purchase.

H. 15 G. 2. Cotleigh v. Stockland. An acre in *Cotleigh*, wherein *A.* had a lease for lives, was mortgaged to a pauper for 15*l.*; when the mortgager died there was two years interest due, and he also owed 18*l.* 10*s.* to the mortgagee by bond and simple contract; and it was agreed between the widow and the mortgagee, that he should administer and take all, but the household-goods, which he did. And the sessions having held, that his taking to this acre, and living on it eight years, did not gain a settlement under the stat. of 9 *Geo. c. 7.* which requires a *bona fide* payment of 30*l.* The court now quashed the order, it being to all intents of law and equity the same as actual payment of the consideration-money. *Str. 1162, Burr. Settl. Cas. 169.*

H. 6 G. 3. Dunchurch v. South Kilworth. *Edward Tanfer*, a certificate man from *Dunchurch*, together with *Elizabeth* his wife, were joint purchasers of a house and premises, for which they paid 19*l.* and upwards, and

laid out 15*l.* more in repairs ; and the same was taxed after the rate of 30*l.* value. By the court : As to the value, the act takes it according to the purchase-money actually paid ; and no money afterwards laid out, can make the prior purchase of a greater value than it really was at the time of making it. Therefore no settlement is gained by this purchase. *Blackst. Rep.* 569.

30*l.* must be actually paid to constitute a purchase within the 9 G.

T. 27 G. 3. Mattingly and Heckfield. The pauper contracted with *John Ironmonger* for the purchase of a copyhold tenement at *Mettingly*, which had been previously mortgaged to one *T. Bailey* for 32*l.* and which sum was unpaid. The contract was, that the pauper should pay 39*l.* 17*s.* 6*d.* for the said tenement, inclusive of the 32*l.* due on the mortgage ; and the pauper paid to *Ironmonger* 7*l.* 17*s.* 6*s.* which, with 32*l.* to be paid to *Bailey*, made the said sum of 39*l.* 7*s.* 6*d.* On *August 3, 1780*, the pauper was admitted to the premises on the surrender of *Ironmonger*, subject to a mortgage surrender for the 32*l.* to *Bailey*. The pauper continued in possession of the premises four years, during which time he paid *Bailey* two years' interest, which was all the interest *Bailey* had received after the purchase. He never paid off the said mortgage money ; and in 1784 he delivered up the possession of the premises to *Bailey*. By the court : It is not even pretended that the sum of 30*l.* has been paid ; but, on the contrary, no more than 7*l.* 17*s.* 6*.* for the pauper only purchased the interest of the mortgagor, subject to the mortgage. The estate was mortgaged for 32*l.* therefore the mortgagor's interest subject to that was only 7*l.* 17*s.* 6*d.* which was the whole of the pauper's purchase. The estate having been mortgaged for 32*l.* the instant the mortgagee got into possession, he might have gained a settlement upon it ; if so, the mortgagee was a purchaser for 32*l.* and the pauper only purchased subject to that charge. Had the purchase money been *bona fide* paid, the court would not have enquired how the purchaser came by the money, or whether he mortgaged the estate for the payment of it ; that might be a question of fraud for the consideration of the sessions ; but, in order to constitute a purchase within 9 G. c. 7, the sum of 30*l.* must not only be paid in point of fact, but must be also *bona fide* paid. 2 *Durnf. & East*, 12.

Consideration in the deed under 30*l.*

M. 30 G. 3. K. v. the inhabitants of Scammonden. The consideration expressed in the deed of conveyance was 28*l.* but parol evidence was admitted to prove that 30*l.* was the real consideration. 3 *Durnf. & East*, 474.

A person may not be removeable, though he

A person may not be removeable from his own estate, though he may not acquire a settlement by it. As in the case

case of *Leeds* and *Blackfordby*. *Joseph Howe*, husband of *Ann Howe* the pauper, took a tenement of 10*l.* a year at *Blackfordby*, and resided there above forty days. He afterwards took a tenement at *Leeds* of above 10*l.* a year, and resided there for above forty days, leaving his wife at *Blackfordby*. Then he returned to *Blackfordby*, and continued with his wife there twenty-seven days. And, on his leaving her and going to *Leeds*, two justices remove her from *Blackfordby* to *Leeds*, as to her place of settlement. It was agreed, that her settlement must follow that of her husband; but the court were of opinion, That the justice had no power to remove her from *Blackfordby*, while her husband's interest there subsisted. The husband himself could not have been removed from his own tenement of *Blackfordby*, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows that they could not remove his wife so long as it remained his. *Blackst. Rep.* 466.

acquires no settlement.

Though it is frequently said, under the title of *Settlements*, that a person not removeable for forty days thereby gains a settlement; it is to be understood only with respect to the particular instance then spoken of: for it is not universally the fact, that every person who resides for forty days unremoveable, becomes legally settled thereby. A servant not removeable for forty days, gains no settlement unless he serves out his year: a bastard, by being forty days with its mother for nurture, does not thereby acquire any new settlement; or a wife residing upon the husband's estate: also a certificate person, or one residing on a purchase under the value of 30*l.* and not actually chargeable, though they are irremoveable, yet, by such residence, they acquire no settlement.

Who are not removeable, though they acquire no settlement.

E. 18 G, 2. *Stansfield* and *Spotland*. If an estate descends to a certificate person, it gains him a settlement, because it is by operation of law, and not by an act of his own; and as the statute has been laid open in cases of descents, it ought to be so in cases of purchases. And by *Lec.* chief-justice, the statute of the 8 & 9 W. hath received a liberal construction; and hath been held to gain a settlement, both in descents, and devises, and purchases. On the 13 & 14 C. 2. the construction has been, that let the value be what it will, a person cannot be removed from his own; and it seems to be the same upon the certificate act; for if he is not removeable within the 13 & 14 C. 2. he is not removeable on the certificate act. 1 *Sess. C.* 316. *Burr. Sett. Cas.* 205.

Certificate man making a purchase, ceases to be a certificate man.

And in the case of *Ivinghoe* and *Stonebridge*, *H. 6 G.* A certificate man made a purchase in *Stonebridge*, and his apprentice lived with him above forty days upon the purchased estate there. By the court: The apprentice thereby gained a settlement; for when a certificate man makes a purchase, he immediately ceases to be there in the nature of a certificate man, and becomes a settled inhabitant, and consequently his apprentice with him. *Str.* 266.

And in the case of *Shenstone* and *Aldridge*, *M. 32 G. 2.* The wife of *Isaac Green*, a certificate man, had an estate devised to her for life by her father; upon which she had her husband entered, and lived thereon upwards of six months. By the court: *Isaac* hereby gained a settlement, notwithstanding the certificate. *Burr. Settl. Cas.* 468.

Residence necessary to gain a settlement.

H. 8 W. Rifelip and *Harrow*. By *Holt*, chief-justice: Having land in a parish will not make a settlement; but a person living in a parish where he has land will gain a settlement without notice; for the act never meant to banish men from the enjoyment of their own lands. *2 Salk.* 524.

In any part of the parish.

But residence upon the same estate is not necessary, provided it be within the parish. As in the case of *Sowton* and *Sydbury*, *E. 12 G. 2.* *19 Viner*, 374. *Burr. Settl. Cas.* 125.

II. Settlement by renting Ten Pounds a Year.

The 13 & 14 *C. 2. c. 12*, enacts, That on complaint within forty days after any person shall come to settle in any tenement under the yearly value of 10*l.* two justices may remove him to where he was last legally settled for forty days.

And the 9 & 10 *W. c. 11*, enacts, That no person who shall come into any parish by certificate, shall be adjudged by any act whatsoever to have gained a legal settlement in such parish, unless he shall really and *bona fide* take a lease of a tenement of the yearly value of 10*l.* or shall execute an annual office in such parish.

A residence of forty days is required to gain a settlement.

Less than forty days residence upon a tenement of 10*l.* a year will not gain a settlement. As in the case of *Dilwin* and *Leominster*, *T. 8 & 9 G. 2.* The pauper took a farm in the parish of *Eardisland*, at the yearly rent of 44*l.* entered on it the *May* following, and lived on the premises about three weeks, when the greatest part of his stock of cattle was seized and driven away for rent due to his former landlord at *Leominster*. The pauper then came to a new agreement with his landlord in *Eardisland*, when it was settled.

tled that he should quit that farm, but continue in the farmhouse and garden, and have a small parcel of pasture with it, at the rent of 3l. 10s. a year, and he continued thereon till *Michaelmas* following. By lord *Hardwicke*, chief-justice: There was no inhabitancy for forty days in *Eardisland* under the lease of 44l. a year; and consequently there can be no settlement gained under it. And the next agreement with his landlord in *Eardisland* was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished. *Burr. Sett. Cas. 54.*

Renting 10l. a year jointly by two persons does not gain a settlement for either. As in the case of *Marden* and *Barham*, *M. 25 G. 2.* where two persons jointly hired a house and land at *Marden* for 16l. a year, and jointly paid the rent; that is, each the like sum. By the court: Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament, in the present case, considers only the right; which is clearly but to one half, and that half does not amount to the value of 10l. a year. *Burr. Set. Cas. 211.*

E. 28 G. 3. K. v. Stoke. The pauper rented a house and land of the yearly value of 8l. 12s. 6d. in the parish of *Barlaston*, where he then resided; and for ten months of the same time he took the hay-grass and aftermath of a meadow in the same parish for 2l. 5s. 6d.. He paid no taxes, but he fenced the meadow, and spread the hillocks himself. He was removed from *Stoke* to *Barlaston*, which was quashed on appeal; and a rule having been obtained to shew cause why the order of sessions should not be quashed, *Leycester* shewed cause, insisting that the agreement for the hay-grass and aftermath did not convey to the pauper any interest in the soil, and that that interest which did pass, was not a tenement within the statute so as to give the pauper a settlement. *Swinerton*, on the other side, was stopped by the court. *Ashurst* justice: It is clear from the stating of the case, that the land was intended to pass; it states, that for ten months the pauper took the hay-grass and aftermath of the meadow. Now, why should he have taken it for ten months, if the soil was not intended to be conveyed? There could be no other profits of this ground than the hay-grass and after-math; and if a man grants all the profits of the ground, he grants the land itself. *Buller*, justice: This is like the case put in *Co. Litt.* where pastures carries the land itself. The pauper was to have the hay and aftermath, which was all

Renting more
than 10l. a year
jointly.

Land of 8l. 12s.
6d. a year, and
the hay-grass
and aftermath.

all the produce of the soil. This is not like taking nay-grass after severance, for that is only a chattel: but here the contract was, that the pauper should take all the grass which should grow; he was to cut it and make it into hay himself; and, after that, he was to have every thing which grew on the land for ten months. *Grose*, justice, of the same opinion. Rule absolute. 2 *Durnf. and East*, 451.

Occupying jointly a farm of 52l. a year gains a settlement.

Occupying a farm jointly of 52l. a year gains a settlement. It being adjudged, in the case of *Little Tew* and *Dunflew*, that each is to be considered as having an interest in the farm, at least as tenant at will, of the moiety of a farm worth 52l. a year for the whole of it, and consequently his moiety above 10l. a year. *Burr. Settl. Cas.* 398. T. 29 & 30 G. 2.

Renting 10l. a year, though part of it is let off to under-tenants, gains a settlement.

M. 7 G. 3. *Llandverras* and *Northop*. *Evan Hughes*, father of the pauper, rented a tenement of 10l. a year, and paid the rent to the landlord. He lived upwards of forty days in a part of it, which part was of the yearly value of 40s only. And, immediately after his taking the tenement, he let the other part thereof to under-tenants, without residing thereon himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10l. a year value, and he ought to occupy the whole 10l. a year. Otherwise, many different poor families might be introduced into a parish, upon one such taking. It would evade the act, if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement. By the court: In case of a gross fraud, the sessions no doubt would find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that *Hughes* was the tenant and liable to the rent, and had credit for the whole. He is therefore as much settled, as if he had rented a tenement of 10l. a year, and let lodgings. The act does not require a person renting a tenement of 10l. a year, to occupy it; it is sufficient if he rents it, and resides forty days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under tenants do not take a tenement of the yearly value of 10l; therefore they do not hereby gain a settlement. *Burr. Settl. Cas.* 571. *Blackst. Rep.* 603.

A person taking a farm of 11l. a year, and afterwards occupy-

T. 13 G. 3. *Awre* and *Newnham*. The pauper *Hathaway Denton*, and one *Richard Mann* his wife's father, jointly rented and occupied an estate at *Newnham* of 80l. a year, for three

three years. *Richard Mann* dying about the end of that time, *Denton* soon afterwards did, alone, take a house of one *Richard White* at *Awre* of 3l. and another estate consisting of lands of one *John Serjeant* at *Awre* aforesaid, at the yearly rent of 8l. *Richard Mann* leaving a widow, and she and *Denton* being, upon the death of the said *Richard Mann*, jointly possessed of the remainder of the stock which had been on the estate at *Newnham*, they the said *Hathaway Denton* and the said widow went and lived at the said house at *Awre*, and jointly occupied that house and the said estate of 8l. a year, for one year, the stock on the said house and estate being partly the property of the said *Denton*, and the other part the property of the said widow; and sometimes one of them sold part of the said stock, and received the money for the same; and at other times, the other of them sold other parts of the said stock, and received the money for the same; and at the time of taking the said tenements by *Denton*, neither the said *Richard White* nor the said *John Serjeant* knew of any connection subsisting between the said *Denton* and the said widow. A moiety of the stock was more than sufficient to stock the said house and farm. It was argued, that *Denton* did not gain a settlement in *Awre*. For though he had taken 11l. a year, yet he came to settle upon only the half of 11l. a year. And it appears upon the whole that he never took 11l. a year for himself. It was admitted, that if the whole taking had been 20l. a year or upwards, then indeed each joint taker would have gained a settlement; but as the whole in the present case amounted only to 11l. each must be considered as coming to settle upon only the half of 11l. Consequently, this man's settlement in *Newnham* remained, as he gained none in *Awre* by coming to settle on a tenement under the yearly value of 10l. Lord *Mansfield* was not in court. The other three judges declared themselves all thoroughly satisfied, that the settlement was in *Awre*. Mr. justice *Ashton* observed, that if two persons jointly take a tenement of less annual value than 20l. this will not gain a settlement to either of them. But a man who takes more than 10l. in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants, who pay him less than 10l. a year. This woman, the widow *Mann*, was in the nature of an under-tenant to the pauper, the pauper had the credit of taking the tenement. He alone took the house, and likewise the lands. Neither of the landlords knew of any connection between the widow and him. And he only was personally responsible for the rent. They

They were not partners in taking the tenement though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person who alone took it lose his settlement by letting in a joint occupier. *Burr. Settl. Cas.* 756.

But though residence is necessary, if a man's family reside there, although he doth not reside there himself, it may in some instances be sufficient. As in the case of *St. Margaret's Westminster*, and *Ludgate*, *M.* 5 G. 2. Two justices remove *Elizabeth Conyers* from the parish of *St. Margaret's* to the parish of *Ludgate*. The sessions state the case specially, that *James Conyers*, father of the said *Elizabeth*, rented a house in *Ludgate* parish of 25*l.* a year, and paid to the rates of the church and poor; but that he was a prisoner in the *Fleet* at the time he did so; and that *Elizabeth* gained no settlement for herself. Upon which the sessions adjudged that he gained no settlement by this. But the court quashed the order of sessions and confirmed the order of the two justices. 1 *Barnardist.* 76. For in this case he was in custody of the law, and in no capacity of gaining a settlement elsewhere; though occasionally absent, yet he might be looked upon as virtually resident at *Ludgate*, which was the place where he came to settle.

The statute mentions in any tenement. It should therefore be considered, what shall be a tenement within this act, so as to gain a settlement,

A water-mill is a tenement.

H. 10 Ann. Evelin and Retcombe. An order was drawn up specially to have the opinion of the court, Whether renting of a watermill of 10*l.* a year, would make a settlement? And by the whole court clearly: A mill is a tenement, and the renting thereof must gain a settlement within the statute. 2 *Salk.* 536. Provided the party lives therein, or within the parish.

A wind mill gains a settlement.

And in the case of *Butley and Benhall.* *T.* 10 G. 2. Renting a windmill at 14*l.* a year gains a settlement. It is the same as if he had rented land of that value. 1 *Seff. C.* 320. *Burrow's Settl. Cas.* 107.

A fishery, &c. gains a settlement.

And in the case of *Old Alresford and Chilton Candover*, *T.* 26 G. 3, The fishery of *Alresford* pond, with the grates, &c. and the spear-sedge, flags, and rushes, growing in and about the said pond, and the right of cutting the sedge on a meadow, being let together for 10*l.* a year, for which the tenant was also to pay 10*l.* a year and supply the landlord's house with fish, was deemed a tenement, and gained a settlement. 1 *Durnf. and East.* 358.

And

And in the case of *Stone and Kniver*, H. 12 G. a coney-warren and a cottage on it at 10l. a year, gains a settlement. By the court: A mill hath been held to be a tenement within the statute, and why not this? It is his ability to pay 10l. a year, that is the foundation of the settlement; and whether he pays it for a house of habitation, or for a warren which brings him in a profit, is not material; the order of sessions must be quashed. *Str.* 678. 2 Sess. C. 109.

Renting a coney-warren.

But by the 13 G. 3. c. 84, A person renting turnpike tolls, and residing in the toll house, shall not thereby gain a settlement. *J.* 46.

Renting turnpike tolls gains no settlement.

In the case of *Lockerly v. Shirefield English*. H. 25 G. 2, It was adjudged, that the renting a dairy and the use of cows, gains no settlement. By the court: A tenement must lie in tenure, and relate to land; whereas this is a mere personal contract, an agreement for the use and feeding of cows, *Burr. Settl. Cas.* 315.

Renting a dairy and the use of cows gains no settlement.

M. 1 G. *North-Nibley and Wotton under Edge*. A person rented an alehouse at 5l. a year at Lady-day; and in May following rented a piece of land for 6l. a year, held the same for two months, and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; though it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10l. a year. *Cases of S.* 86. 1 Sess. C. 73. *Fol.* 79.

10l. a year, though rented of two persons gains a settlement.

T. 3 G. *South Sydenham and Lamerton*. A person rented a tenement of 10l. a year; it was one entire tenement, but lying in two parishes. The question was, Whether this gained a settlement? By the court: If the tenement be entire, though the lands are in different parishes, it seems to be a settlement in that parish where the house is. *Str.* 57. 1 Sess. C. 115. *Foley* 81.

One tenement of 10l. a year, though in two parishes, gains a settlement.

M. 3 G. 2. *Elsted and Hollibourne*. A person rented a tenement, consisting of a farm house and land; which house and land laid contiguous, and had been usually letten together, and occupied by the same person; but the house and so much of the land, as together amounted to 9l. a year, lay in one parish, and 3l. 10s. in another parish. By the court: This was held to be a settlement, on the authority of *South Sydenham and Lamerton*. 2 Sess. C. 130. *Str.* 849.

In the case of *Simonbourn v. Meckridge*. The pauper was permitted by several persons, having a right of common, to occupy a tenement of 10l. a year, as a reward for his service as an herd; and it was held that that gave him a settlement. 1 *Durnf. and East*, 598.

Occupying a tenement in consideration of service.

In

Two distinct tenements, in different parishes, amounting to 10l. in the whole, gain a settlement where the tenant lives.

In the case of *Sandwich and Studland*, E. 8 G. 2, it was adjudged as follows: A person rented a house in *Studland* at 30s. a year. After he had lived in it about two years, he took lands in *Langton* of 12l. a year, on which there was *no house*; and occupied the said lands two years: all which time he inhabited in and rented also the said house in *Studland*. By the court: It has been a question, Whether two distinct tenements taken at different times (where neither of them separately amounted to 10l. a year in value) should make a settlement? But it is now settled that *it does*. And it is the same thing whether the taking was distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives. The ground of these resolutions is, the ability to rent a tenement of such a value; which excludes the presumption of his being likely to become chargeable to the parish. *Bur. Sett. Cas. 44.*

The statute says, *Under the yearly value of 10l. a year.* If the tenement is under 10l. a year, the justices upon complaint within forty days have power to remove the person coming there to reside; if it is not under 10l. a year, that is, if it is 10l. or more, they have no power to remove him; and if he continues on it unremoveable for forty days, he thereby gains a settlement.

It is here to be remarked, that the payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. The settlement is not suspended, as in the case of a hired servant, till he shall have ended his year; but so soon as he hath resided forty days, he is settled without more; even as apprentices are settled in forty days, without any regard to serving out their time.

The statute says nothing about the *time* a person shall rent the tenement, mentioning only the value by the year. As in the case of *Staunton under Bardon and Ulecroft*, H. 6 G. 3. The pauper took a tenement from the 1st of June till *Lady-day* following for 26 guineas, which he occupied accordingly, and paid the rent. The question was, Whether by continuing upon this tenement for forty days, unremoveable, he thereby gained a settlement? And by the court, clearly, he did. *Burr. Sett. Cas. 558.*

It has sometimes been adjudged, that the rent is not material, if the tenement is of the value of 10l. a year. As in the following case:

Not the rent, but the value of the tenement, is principally to be considered.

H. 16 G. 3. K. and *Bilsdale Kirkham* in the north riding of the county of York. *Thomas Wilson* went from the parish of *Bilsdale Kirkham* to *Bilsdale Westside*, and there married

married *Sarah* the pauper, who then rented a tenement of 4l. a year, and he occupied that tenement with her during his life. He afterwards died, leaving the said *Sarah* the pauper. Evidence was offered to prove that this tenement, at the time the man occupied it with his wife, was worth 15l. a year, though let for no more than 4l. But the sessions rejected this evidence, and determined on the rent actually reserved; which being under 10l. a year, they adjudged that the pauper was not settled in *Bilsdale Westside*, by renting such tenement. By lord *Mansfield*: The justices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10l. a year, any year during the man's occupation of it, he will thereby gain a settlement. The case was sent back to the sessions to receive evidence of the value. Which being certified as above, the court held it a good settlement. *MS.*

The same was adjudged in the case of *St. Matthew's, Bethnel-green*, and *St. Botolph's Aldgate*, H. 7. G. 3. Burr. Settl. Cal. 574.

M. 27 G. 3. *Bedworth* and *Fillingley*. Two justices removed *Mary Watson* widow, and her five children, from *Bedworth* to *Fillingley*. The sessions confirmed the order, and stated the following case: That *John Watson*, late husband of the pauper, rented a farm of 40l. a year at *Fillingley*, and, being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep; with which he went to *Bedworth* about Lady-day 1783, where he took a house and land of 8l. a year rent, and resided thereon about three years; during which time the rent was paid in the following manner, viz. the first half year by himself, the second half year by the parish of *Fillingley*, the third half year by himself, and the fourth by a distress: that about the said Lady-day 1783, *Thomas Watson*, in a conversation with his brother *John*, concerning his family and poverty, said, "I am sorry for your family, and therefore I will give you a close in *Astley* (an adjoining parish) containing about four acres, to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it." *John* enjoyed the close, which was worth 2l. 10s. a year, for three years, during which time his brother *Thomas* paid the land-tax and poor rates for it: all the tillage was likewise performed by the servants and horses of *Thomas*, and they also got in the harvest: that one year the said close was sown with *John's* wheat,

Living on a tenement of the value of 10l. a year, though a part thereof is a charitable gift, gains a settlement.

wheat, procured by the gleanings of his family; and in the last year it was sown with *Thomas's* corn, at whose expence the crops of the said corn were carried to *John's* house: that the cattle of *Thomas* were never put into the said close, except for tilling the land; but that the cattle of *John* were upon it during the time he so enjoyed it. *Ashbursl J.* In all cases upon settlement-law, it is the safest way to adhere to the words of the act; now taking it upon the words, nothing can be more clear; they are, "That it shall and may be lawful, upon complaint made by the churchwardens, &c. within forty days after any person or persons coming to settle as aforesaid in any tenement under the yearly value of 10*l.* for any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove; &c." The act does not say any thing about *ability*: that is not the criterion. And if the party comes to reside upon a tenement of 10*l.* a year, he cannot be removed, and then he gains a settlement by forty days residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*; yet if a man has such credit and confidence reposed in him by another, as to be trusted with a tenement of 10*l.* a year value, even out of charity, it is sufficient to answer the intent of the statute, because such an one is not likely to become chargeable. Therefore neither upon the words, nor the meaning of the act, was this man removeable; and therefore he gained a settlement. And it was agreed by the court, that this is a sufficient taking of a tenement within the statute. Order of sessions quashed. 1 *Durnf. and East*, 458.

Unless he (the certificate person) shall really and bona fide take a lease] *H. 8 G. Cranley and St. Mary Guilford.* Upon a special order of sessions it was stated, that a certificate man agreed with the lessee of a mill, that he should occupy the mill, and pay 12*l.* a year; that there was no under-lease or assignment, but in pursuance of that agreement the certificate man occupied the mill two years, and paid the rent. The sessions adjudged it no settlement. But by the court: The order must be quashed: for if this be not an absolute lease for a year (as *Eyre J.* said it was, the rent being reserved as rent for a year), yet it is undoubtedly a lease at will, which is sufficient to gain a settlement. *Str.* 502.

M. 9 G. St. John's Hertford and Amwell. A certificate man took a farm of 10*l.* a year, part of which was in *St. John's*,

John's, and part in *Amwell*; but the greatest part, together with the house, being stated to lie in the parish that received his certificate, the court held it a settlement there. *Str. 529. Cas. of S. 148.*

In the case of *St. Mary Calendre* and *St. Thomas. H 8. G. 2.* It was said; that these acts have been liberally expounded, and that renting 10*l.* a year in different parishes will avoid a certificate. *1 Sess. C. 315.*

And in the case of *Stapleford* in *Leicestershire. E 4 G. 2.* A person took 3*l.* a year in the place he was certified to; and 40*l.* a year in the next parish, but lived where the 3*l.* was; and it was held a settlement there. *Str. 849.*

E. 15 G. 2. Bowling and Bradford. A certificate person rented and resided upon a tenement of 9*l.* a year in *Bowling*, and at the same time rented lands of 1*l.* 15*s.* a year in another parish. It was objected, that, to avoid a certificate, it is necessary to rent 10*l.* a year in the parish where the certificate person inhabits; for the act says, that no person coming into any parish by certificate, shall gain a settlement in such parish, unless he shall take a lease of a tenement of 10*l.* a year, or execute an annual office in such parish. By the court: Renting 10*l.* a year is only required in general, and is not confined to the particular parish. The words in such parish relate only to executing an annual office. And it is within the same reason (namely, the substance and credit of the man) whether he rents that value in one parish, or in different parishes. *Bur. Sett. Cas. 177.*

T. 10 G. 2. Butley and Benball. A person who rented a windmill at 14*l.* a year, gave security for the rent. It was objected, that this was no settlement; for that the foundation thereof is the credit of the party, which fails in this case. But by the court: Giving security for the rent doth not alter the case; for he that hath credit to give security, has credit to pay rent. *Burr. Sett. Cas. 107.*

12. Settlement by paying Parish Rates.

By the 13 & 14 C. 2. c. 12. it is enacted; That forty days inhabitancy shall gain a settlement;

And by the 1 Jac. 2. c. 17; Such forty days are to be reckoned from the delivering of notice in writing.

And by the 3 W. c. 11, From the publication of such notice in the church.

But by the said statute of 3 W. c. 11. s. 6, If any person who shall come to inhabit in any town or parish, shall be

The paying of taxes gains a settlement.

be charged with and pay his share towards the public taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published.

Certificate man
excepted.

It is however enacted, by the 9 & 10 *W. c.* 11, That persons residing under a certificate shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.

Tenant must be
rated and pay,
to gain a settle-
ment.

The act of 3 *W. c.* 11, says, *shall be charged with and pay.* In the case of *Sarrat and Bovington, M. 9 G. 2.* The landlord, who never occupied the house, was charged to the poor-rate; but the tenant, on demand of the overseers, paid it. By lord *Hardwicke*, chief-justice, and the court: The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay in order to get a settlement. *Burr. Sett. Cas.* 73.

And in the case of *Sealon Tongall v. Warpleston, M. 13 G.* By the court: The tenant does not gain a settlement, unless he be both rated and pay. *Foley*, 128.

Also in the case of *K. v. the inhabitants of St. John, Southwark, T. 19 G. 3,* It was adjudged, that paying, without being rated, will not give a settlement. *Caldecott's Rep.* 62.

H. 21 G. 3. Bailey and Heckmondwicke. The mother occupied the house, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, though they knew that she was dead. By lord *Mansfield*: There must be such a rating and paying, as to shew manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and could be on no body else. This (he said) was determined in the case of *K. and Walsall, M. 18 G. 3,* where the rates were charged in these words, "Late *Lowbridge's* house, 2l. 6s." *Dougl.* 543. *Cal. Rep.* 103.

And in the case of *Lower Walton and Appleton. H. 10 G. 2.* The father was rated, and the son who occupied the tenement paid the rent. By the court: This gained no settlement to the son. *Burr. Sett. Cas.* 100.

Name not abso-
lutely necessary.

But it does not seem absolutely necessary that the occupier should be rated by name: as in the case of *K. v. Brightman. E. 8 G.* A man lived in a place called *Hofcoe's* tenement, and paid taxes there by the name of the occupier.

occupier of *Hoscoe's*. This was adjudged to be a sufficient designation of the party, so as to gain a settlement. 8

Mod. 38. Burr. Mansf. 1062.

"Tenant" has been adjudged a sufficient description of the occupier of the house: as in the case of *Painswick and Cirencester*. The pauper *Isaac Moorman*, took a house in *Cirencester* of one *Thomas Clifford*, and agreed to pay the land-tax, poor-tax, and all other taxes. The rating was thus: "*Thomas Clifford, or tenant.*" The court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. *Burr. Settl. Cas. 465.*

E. 4 G. 3. Openshaw and Gorton. *James Bowden*, who was settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window-tax. The rating was thus: "*Bowden's.*" The landlord himself paid the taxes; but in the last year, the landlord having some disputes with the overseers about his assessments, directed the overseers to call upon his tenant *Bowden* for a poor rate and a church rate, and tell him that he his landlord ordered him to pay, and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the estate (which was six days before the order of removal), when he repaid the money. It was objected, that in this case the tenant was neither rated nor paid. By lord *Mansfield, Ch. J.* This was a tenant's tax; and he is assessed by name, *Bowden's*. The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish. *Burr. Settl. Cas. 522. Blackst. Rep. 463.*

H. 21 G. 3. Croydon and Corhampton. The overseers made a rate for 2s. in the pound in the following form: "Rent 4l. Q. certificate. Occupier, *Richard Goodiff*. Sum assessed - - - -". The overseers demanded 8s. for the rate, declaring he was assessed in that sum for the relief of the poor. *Goodiff* objected to paying the money required, alledging that he was not a parishioner. The overseer opened the rate-book, and shewed him his name therein, and threatened to distrain for the 8s. if he did not pay it. In consequence of this, *Goodiff* paid the money immediately. In the afternoon of the same day, the overseer returned, with the vestry-clerk, and offered to return the money,

Tenant of the premises a sufficient description.

A tax rated, demanded, and paid, though by mistake, gains the tenant a settlement.

saying he had taken it by mistake. *Goodiff* refused to receive it. The overseer, however, left it, and went away, on which *Goodiff* threw the money after him. It was objected, that here was no rating; no sum having been put against *Goodiff*'s name. The parish knew that he occupied the house, but they never intended to rate him. The mistake of the overseer (especially when so soon corrected) in supposing him rated when he was not, could not be binding upon the parish. But by lord *Mansfield*: There is no question in this case. The title of the rate is 2s. in the pound; and, in the column of rent, *Goodiff*'s rent is 4l. This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides, he has paid it, and against his will; and he shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Caldecott's Rep.* 108.

The pauper being duly rated, and having absconded, his landlord desired the collectors to levy a distress on his goods, lest he (the landlord) should lose the money; in consequence of which they went to the house, where the pauper's daughter said, a friend of her father would assist them; they immediately went to this friend, who gave a guinea to the collectors, who thereout received the tax; this was held payment of the rate by the pauper, and gained a settlement.

H. 30 G. 3. K. v. The inhabitants of Bridgewater. Two justices removed by an order, the children of *Thomas Bastard* (who had absconded and left his family,) from *St. John the Baptist* in *Cardiff* to *Bridgewater*; which order the sessions confirmed on appeal, subject to the opinion of the court of King's Bench on the following case. *Thomas Bastard*, the father, inhabited for some time in a house in *St. John's*, which he rented of *William Lewis*; and while he so occupied it, an assessment was made in *St. John's* for the land-tax, entitled "a rate on the several inhabitants, owners, and occupiers of houses, lands, &c. in the parish;" to the following effect: Occupier *Thomas Bastard* sum assessed 6s. 9d. *Thomas Bastard* having absconded and left his house and children, *William Lewis* the landlord, on the 12th of *May* 1789, desired the collectors of the land-tax to go with him to *Bastard's* house in order to make a distress on his goods for the 6s. 9d. otherwise he should lose the money: and *Lewis* accompanied them to *Bastard's* house, where they saw one of *Bastard's* daughters, about twelve or thirteen years of age, of whom they enquired for *Bastard's* goods; she, pleading poverty, said she had a friend who would pay the money; and accordingly went with the collectors and the landlord to one *Mrs. Owen*, who gave a guinea to the collectors, who received thereout the land-tax; and both the collectors signed a receipt for the tax, but the receipt was not produced to the sessions. *Beacroft*, and *Lane*, in support of the order of sessions, admitted that the father of the paupers had been duly rated; but contended that he had not paid the rate. The money was raised at the express

express request of the landlord, and for his sake, lest (as he himself expressed) he should lose it. The payment by Mrs. Owen cannot be considered as the act of *Bastard*; she paid it without any authority or even request from him, and could not therefore maintain *assumpsit* against him for money paid to his use. But the court were clearly of opinion that it was money raised for his use, for which an action might be maintained against him. The money was advanced by a friend in order to protect him from a distress, under which his goods would otherwise immediately have been taken. Both orders quashed. 3 *Durnf. and East*, 550.

His share towards the public taxes or levies of the said town or parish, says the statute; but though the rate should not be properly proportioned, or in the form or manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement; for it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly, 19 *Vin.* 386. *St. Giles's Cripplegate* and *St. Mary Newington*.

By the 9 G. c. 7, Persons assessed to the scavenger's rate, or to the repairs of the highways, and duly paying the same, shall not be deemed to be settled thereby.

Highway or scavengers rate gains no settlement.

It was formerly doubted whether the being assessed to and paying the land-tax would gain a settlement, considering it as a county tax: but, in the case of *Okehampton* and *Kemp-ton*, E. 7 G. 2, it was held by lord Hardwicke, chief justice, and the court, that it has been settled, that the land-tax is a parish tax within the act, *Burr. Sett. Cas.* 5. So also in the following case;

But paying to the land-tax does,

E. 17 G. 3. *K. v. St. Mary Whitechapel*. The pauper was rated and paid the land-tax at *Portsea*, and it was adjudged that he thereby gained a settlement. *Caldecott's Rep.* 24.

The same was adjudged in the case of *Fulham* and *St. Margaret's Westminster*, as a settled point. *M.* 33 G. 2.

But, by the 21 G. 2. c. 10, Persons assessed to and paying the duties on houses and windows, shall not thereby gain a settlement. So also by the 18 G. 3. c. 26, payment of the duties granted by that act, on houses worth the yearly rent of 5*l.* and upwards, shall not gain a settlement.

Taxation on houses and windows gives no settlement

13. Settlement by serving a Parish Office.

It has many times been found necessary to observe, and under this head it is essential to repeat, that the 13 and 14 C. 2. c. 12, enacts, That forty days inhabitancy shall gain a settlement. And that, by the 1 Jac. 2. c. 17, such forty days shall be reckoned from the delivering of notice in writing. And further, by the 3 W. c. 11, they shall be reckoned from the publication of such notice in the church.

Serving a parish office gains a settlement, without notice and publication.

But by the last-mentioned statute, s. 6, Any person coming to inhabit in any town or parish, who shall for himself, and on his own account, execute any public and annual office or charge in the said town or parish, during one whole year, shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published.

Certificate-man.

The 9 and 10 W. c. 11, enacts, That no person coming into any parish by certificate, be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and *bona fide* take a lease of a tenement of the yearly value of 10*l.* or execute some annual office in such parish, being legally placed in such office.

The act requires that he should serve *for himself and on his own account*. Hence it clearly appears, that a person serving the office of constable as deputy to another, though duly sworn, does not thereby gain a settlement. 19 Viner, 379. *Lethsome and Sheriff Hales*.

This was determined by the court unanimously, in the case of *Winterbourne and St. Philip and Jacob*, H. 4 G. 3. Blackst. Rep. 452.

Also in the case of *Alcannings and Patney*, H. 9. G. 3. *Thomas Palmer*, by leave of the court-leet, was sworn in and served the office of tithingman for a Mr. *Armer*, who paid him his expences, &c. By the court: *Palmer* gained no settlement in *Patney*; for clearly he served for *Armer*, and did not execute the office *for himself*, and on his own account. *Burr. Sell. Cas.* 634.

Parish clerk deemed a parish office.

Annual off. c.] H. 9 Ann. Gatten and Milwich. A person chosen parish clerk by the parson, served several years, and received his fees and dues. By the court: It is a parish office, having the care and custody of the ornaments of the church. It is true, if he is poor, and has a family, the parish may remove him; for though he came in by the parson only, yet, their not removing him implies their consent and approbation; and by this implied consent of theirs,

theirs, the law adjudges him in by the concurrence of the parish. *Cases of S.* 241. 2 *Salk.* 536. *Foley*, 123.

E. 8 G. 2. K. and St. Mary Berkhamstead. The court seemed to be of opinion, that the executing the office of a parish clerk is sufficient for a certificate person to gain a settlement; for it is an annual office and more. 2 *Sess. C.* 182. And it is not necessary for a parish clerk to be licensed by the ordinary, in order to be legally placed in such office. *Str.* 942.

In the case of *Bishop v. Crikham. H. 7 G.* The sessions setting out the fact specially, adjudge the settlement of a pauper to be at *Bisham*; because, when he lived in that parish, he executed the office of collector of the duties given by the 6 & 7 *W. c.* 6, on births and burials. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who appoint the collectors) a power to bring what charge they would upon the parish. They also contended that it was not stated in the order to be an annual office, as it must be to give a settlement, within the express words of the act. But by the court: The reason why the executing offices gives a settlement without notice, is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should take notice. Can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It need not be a parish-office, but a public annual office in the parish. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears, on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It has been held a settlement in the case of the land-tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley*, 124.

Office of collector of the duties under the 6 & 7 *W. c.* 6. deemed a parish annual office.

The office of tithingman is an annual office in the parish, within the words and meaning of the act. *Str.* 444. *Bur-liscomb and Samford Peverell, H. 9 G.*

E. 8 G. 2. St. Maurice's and St. Mary Calendar's in Winchester. William West, a certificate man from *St. Thomas's*, came into the parish of *St. Mary Calendar* in *Winchester*. He was afterwards chosen one of the constables for *Winchester*, a city consisting of several other parishes besides that of *St. Mary Calendar*; and was legally placed in that office, and executed it in and through all parts of the

A tithing-man is within the meaning of an annual parish officer.

A constable, though chosen for a city, is within the meaning of the act.

city for one whole year; during which time he resided in the parish of *St. Mary Calendar*. By the court unanimously: He avoided his certificate, and consequently gained a settlement in *St. Mary Calendar's*, by executing this office in that parish; though chosen by the city at large, and not by the parish of *St. Mary* singly; and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish, being legally placed in such office. *Burr. Settl. Cas.* 27.

But the office must be executed for a whole year.

In the case of *Fittleworth*, and *Pulborough*, *M.* 18. *G.* 2. A certificate man was elected and sworn a tithingman for a tithing, being a part of the parish of *Fittleworth* in which he resided. He executed the office upwards of five months, and then became actually chargeable, and asked relief. The justices thereupon removed him, and their order upon appeal was affirmed. And by the court: The justices had jurisdiction to remove him, though in execution of the office, he being become actually chargeable. It is not indeed necessary that the office should extend throughout all the parish; the act only requires executing some annual office in the parish; but it must be executed for the space of the whole year. The pauper therefore did not gain a settlement. *Burr. Settl. Cas.* 238.

And in the case of *Witchurch* and *Overton*, *T.* 27 & 28 *G.* 2. It was stated, that the pauper was nominated at the court-leet, and sworn into the office of *bailiff* or *ale-taster* for the borough: that he executed the office in the borough for a year: that the said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court-leet there: that the borough is not one fifth part of the parish: and that the bailiffs have never executed any authority over the parish at large. On the authority of the preceding case of *Fittleworth*, this was held to be a good settlement. *Burr. Settl. Cas.* 365.

III. Of the Poor-Rate, and other Aids for their Relief.

1. Of the Poor Rate.
2. Of taxing other parishes in Aid.
3. Reciprocal Obligations from Parents and Children to maintain each other.

1. Of the Poor-Rate.

After a variety of endeavours, for some ages, to procure

a voluntary support for the poor, coercive measures were at length found absolutely necessary: power was therefore given, by the 14 *Eliz. c. 5.* to the justices to lay a general assessment; and this has ever since continued: for the 43 *Eliz. c. 2.* is only a re-enacting of former provisions, with very inconsiderable alterations.

The said statute of 43 *Eliz. c. 2.* enacts, That the churchwardens and overseers of the poor of every parish, or the greater part of them, shall raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor as are not able to work, and also for the putting out poor children apprentices. *s. 1.*

The statute expressly says, *The churchwardens and overseers.* In *Tawney's case*, *H. 2 Ann.* It was adjudged, that the concurrence of the inhabitants in making a rate is not necessary; for, by these words, the churchwardens and overseers may make one without them. *L. Raym. 1013. 2 Salk. 531.*

Churchwardens and overseers to make a rate

If the overseers refuse to make a rate, the court of King's Bench will grant a *mandamus* to compel them. But the court will not grant a *mandamus* to make an equal rate; because it is to be presumed that the overseers will do justice. If they do not, there is a proper remedy by appeal to the sessions. *K. v. Barnstable, H. 2. G. 2. 1 Barnard. 137.*

Overseers may be compelled to make a rate.

M. 10 G. 3. K. and Brograve. It was moved to set aside an order of sessions confirming a rate allowed by two justices, whereby the occupiers of land were assessed at three fourths of the yearly value, and the occupiers of houses at only half, which appeared to be unequal. But by the court: Here is no apparent inequality, and we are not presume it. There may be reason to make a difference between lands and houses. For there are several charges incident to houses which do not fall upon lands, to lessen their yearly value. *Burr. Mansf. 2491.*

The court will not presume a rate unequal, though houses and lands are not rated alike.

And in the case of *K. v. Butler & al. E. 20 G. 3.* It was held by lord Mansfield, That, unless it is manifestly unequal, the court will presume it equal. *Caldecott's Rep. 93.*

In *Tawney's case* above-mentioned, *Tawney* being overseer of the poor, laid out his money in the relief of them, and was turned out of his office by the justices before the end of the year. A rate cannot be made to reimburse money laid out by overseers after they are out of office.

the year ; and consequently had not an opportunity of making a rate to reimburse himself. He therefore applied to the court of King's Bench for a *mandamus* to the churchwardens and overseers to make a rate to reimburse him. It was argued against the *mandamus*, that there can be no such charge, neither by the common law nor by the statute. And by *Holt*, chief-justice : We cannot order the parish or overseers by a *mandamus* to make a rate to raise money to reimburse an overseer, but only to raise money for the relief of the poor ; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he has it ; if he does, he must make a new rate for the relief of the poor, and out of that he may retain to repay himself. *Tawney* should have done so ; he trusted where he needed not to have done it. He hath not pursued the means the statute gave him, and we cannot relieve him. And by the whole court : The *mandamus* lies not. 2 *Salk.* 531.

Rate cannot be made to repay money borrowed for building or repairing workhouses ; it must be to raise money for the relief of the poor.

E. 19. G. 3. K. and Wavel. On a rule to shew cause, why a rate for the relief of the poor of the parish of *Effingham* in *Surry*, and an order of sessions confirming the rate, should not be quashed, the sessions had refused to state a special case ; but the counsel for the appellants being of opinion that the rate would appear to be bad from the title of it, they removed it by *certiorari*, and obtained the present rule. The title of the rate was as follows : "*Surry to wit. An assessment on all and every the occupiers of lands and houses in the parish of Effingham for the necessary relief of the poor, and towards payment of money borrowed for repairing and rebuilding the workhouse.*" In support of the rate, it was contended that the title of the rate would undoubtedly have been good, if it had been only "*An assessment for relief of the poor,*" and that the acts and orders of magistrates (except convictions) are entitled to every intendment from the court that can support them, and therefore that the court would intend the whole money to have been assessed for the first purpose expressed in the title (if it should be thought that the other was not within the statute), and would reject the additional words as surplusage : that if the present objection was founded in law, the proper method of getting at it would have been, by an appeal from the allowance of the overseers' accounts. However, this purpose of building or repairing a workhouse, was certainly within the spirit of the statute, since it would be in vain to provide for the sustenance of the poor, without being able to furnish them with a lodging. On the other side, it was said to be a general

general rule, that the parish officers cannot borrow money for any purpose whatever. The inconvenience of vesting such an authority in them was manifest; for new inhabitants might be called upon to pay money borrowed before they became parishioners, and for purposes from which they could derive no benefit. Lord Mansfield was absent. *Willes* justice: Can we reject as surplusage what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney's* case is in point. And as to an appeal against the overseer's accounts, is a parishioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported. *Ashurst* justice, of the same opinion. *Buller* justice: This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's* case goes that length; for it is not confined to the *mandamus*. If it were otherwise, the inconvenience might be very great. And the rule for quashing was made absolute. - *Douglas* III.

The 17 G. 2. c. 38, enacts, That where persons shall come into or occupy any premises, out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied; every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that he occupied the same respectively, under the like penalty of distress, as if such person so removing had not removed, or the person coming in or occupying had been originally assessed in such rate; which proportion, in case of dispute, shall be ascertained by two justices. s. 12.

Persons removing to be rated in proportion to the time of their respective occupations.

By this statute the taxation ought to be equal; and therefore ought to be continually altered as circumstances alter. 2 *Salk.* 526.

Rate should be altered according to the alteration in value.

And in the case of *K. and Audley, M. 12 W.* By Holt Ch. J. The old rate, however just at first, may be unequal now, and therefore the justices cannot make a standing rate, for lands may be improved. 2 *Salk.* 526.

H. 2 G. K. and Clerkenwell. An order was quashed, which was made to confirm a poor-rate, which rate was made according to the land-tax: objected, that this taxation was not equal, because the personal estate in the public funds is not chargeable to the land-tax, but it is to the poor: and by the whole court this rate for that reason was set aside. *Foley*, 12.

Land-tax is no rule for the poor-rate.

A farmer is not taxable to the poor-rate for his stock,

A farmer is not rateable for his though stock.

Sessions ought
not to quash the
whole rate for
one or two per-
sons being left
out.

though a tradesman is taxable for his stock in trade. This was deliberately determined by the justices of the King's Bench, contrary to the opinion of *Holt*, chief-justice, in the case of *Q. v. Barker*, *H. 5 Ann. Lord Raym. 1280.*

E. 10 G. 3. K. v. Witney in Oxfordshire. Upon an appeal against a rate for the relief of the poor of the parish of *Witney*; the cause of appeal was, that there are within the said parish many manufacturers of blankets and other traders, who employ many servants and apprentices: and such manufacturers and traders, were not assessed in the said rate for their stocks in trade: and therefore, the said rate was quashed; the court of sessions conceiving itself bound to quash the rate, on account of the omission of such stock in trade in the said rate; subject however to the opinion of the court of King's Bench on the following facts: it appeared there have long been many such manufacturers and traders within the said parish, who have been constantly assessed to the land-tax for their respective stocks in trade, but none of whom have ever been charged with the payment of any rate for the relief of the poor on account of such stocks: that as well the said manufacturers and traders, as all other occupiers of lands and houses within the said parish, have been and constantly are assessed, in this and all former rates for the relief of the poor, as well as to the land-tax, for the lands and houses in their respective occupations. The counsel in support of the order of sessions cited and relied upon the case of *Q. and Barker*. But the court were not satisfied of the authority of this case. Lord *Mansfield* expressly called it a *strange case*. They observed, that the opinion of three of the judges was only said to be, that a farmer for his stock was not taxable, contrary to the opinion of *Holt* chief-justice. But it does not appear that a question was directly put to them, Whether a tradesman was taxable to the poor for his stock in trade? The court however gave no explicit opinion on the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade. Whatever may be the future determination of that point, whenever it shall come regularly before the court, they held it improper and inconvenient for them to enter into the discussion of it upon the sessions order as it now stands. It would make great confusion, if the court were to give general opinions upon vague states of cases: they are to judge upon the case before them, and their judgment ought to go no further than the case stated to them goes. Whereas they have here asked a general opinion, without any particular case stated. They ask us this
general

The court are to
consider what is
stock in trade.

general question, without stating what is stock in trade; or, what it is that the rate has taxed; or whether these people have any stock in trade; or, what that stock in trade is; nor any particular description of what trade is meant. But here, the order of sessions is clearly wrong upon the face of it: because they ought not to have quashed the whole rate, but to have added those persons, and that property which was thought were illegally omitted. And the order was quashed. 5 Burr. Mansf. 2634. Bott. 34.

T. 15 G. 3. *K. v. Ringwood*. Lord Mansfield and the court, as in the preceding case, adjudged, that the sessions ought not to have quashed the whole rate for an omission, but should have amended it by inserting the particular persons, and that property which was omitted, and which they thought rateable. The question was determined upon this point; the court seemed clear that the stock in trade of brewers, maltsters, &c. ought not to be rated. Cowper, 326.

But though with respect to quashing the rate, it appears that in the two next preceding cases of *E. 10 G. 3.* and *T. 15 G. 3.* the court of King's Bench adjudged, that the sessions ought not to quash the whole rate for one or two persons being left out, but should only have amended it; yet the same court have lately decided, That if the name of any person be omitted in the rate, the justices ought to quash it, and not amend by adding the name. How far these adjudications militate against each other, will appear by perusing the following case.

H. 27 G. 3. *K. v. Churchwardens and overseers of Maddern*. The following order was returned by *certiorari* from the sessions holden for the county of Cornwall. Upon the appeal of *John Hopkins* against a rate for the relief of the poor of the parish of *Maddern*, in *Cornwall*, the following notice was produced, which had been served on the churchwardens and overseers of *Maddern*: "I do hereby give you notice, That I do intend to enter into, and try such appeal at the next general quarter-sessions of the peace to be holden, &c. for that my said rate or assessment, and my reason for appealing therefrom, and my charging it to be partial, unfair, unequal, and unjust, is that you have left out and omitted in the said rate or assessment the name of the reverend *William Borlase*, as vicar of the said parish of *Maddern*, and neglected to charge, rate and assess him, for the small tithes, dues, obventions, oblations, and offerings, due and payable to him as the vicar of the said parish of *Maddern*, and liable to be rated and assessed towards the relief of the poor of the said parish of *Maddern*, at the time of making the said rate or assessment, and for some

Stock in trade of brewers, maltsters, &c. ought not to be rated.

If the name of any person be omitted in the rate, the justices ought to quash it, and not amend, by adding the name.

“some time before.” The advocates for the appellant moved to quash the rate for the omission stated in the notice, which was objected to by the advocates for the parish officers, who were respondents. They insisted, That under this notice, and for omission only, the court ought and were bound to *amend* it: and it then appeared, that the solicitor for the appellant had omitted to give any notice to *William Borlase*, of the intention of adding him to the rate. The advocates for the respondents moved the dismissal of the appeal on the above grounds; but in as much as they did not shew to this court the value of such tithes, whereby they might amend the said rate, if notice had been given; this court, for such omission of the said *William Borlase*, and not being able in this case to amend it, do quash the same; subject however to the opinion of the court of King’s Bench. A rule having been obtained to shew cause why the above order of sessions, quashing the rate, should not be quashed; 1st, Because no notice had been given by the appellant to *Borlase*, that his name ought to have been added to the rate; and, 2dly, because the rate itself ought to have been amended, and not quashed; *Gibbs* now shewed cause, and *Lawrence* and *Lamb* argued in support of the rule. *Ashhurst J.* now delivered the opinion of the court. There have been two objections made. First, That no notice was given to *Borlase*, whose name was omitted in the rate. 2dly, That at all events the rate should not have been *quashed*, but *amended*. As to the first of these objections, there seems to be no ground for it; the statute 17 G. 2. c. 38, says, The party aggrieved may appeal to the next quarter-sessions, giving reasonable notice to the churchwardens or overseers of the poor of the parish, &c. and says nothing of any other person; neither does the nature of the case require it. For the complaint is against the churchwardens and overseers, for having done injustice to the rest of the parish, by their having left out persons who ought to be rated, and by those means imposed a greater burden on those who are rated than they should have done. It then becomes their business to take proper steps to gain all necessary information; and there is still less occasion for giving notice to the individual, if the justices ought to quash the rate, and make a new one. As to the second objection, we are of opinion, That the justices have done right in *quashing* the rate; for, though this is the case only of a single person omitted, it is impossible to draw the line; and it might as well be the case of fifty, which would impose upon the rest of the parish a greater burden than they ought to bear. The case of *the King* against the churchwardens

wardens of *St. Catherine's, Gloucester*, is in point. There the objection to the rate was the leaving out of the rate Mr. *Pitt's* tenants, for which the sessions quashed it. The court said the justices had done right; for if all proper persons had been rated, of course a less sum would have been requisite from the rest of the parish. As to the case of the *King* against the inhabitants of *Witney*, 5 Burr. 2634. The point before the court was, Whether the stock in trade ought to be rated. The court said the sessions had not stated what the stock in trade was, or what it was that the rate had taxed, or whether the persons rated had any stock, or what that stock in trade was, nor any particular description what trade was meant. The court indeed is made to say further, that, on quashing the old rate, a new one ought to have been made: but that was not the point on which the decision turned. And indeed it may seem doubtful, whether the justices are the proper persons to perform this office; as the consequence of adding a new set and description of persons would be, that a great many enquiries must be made, which would exceed the bounds of the justices sitting; and besides, the party, if over-rated, ought to have an opportunity of appealing, which I do not know that he could have from one quarter-sessions to another. The making of a rate is in its nature a *ministerial*, and not a *judicial* act. For though they exercise a judgment in saying he ought to be rated; yet the *quantum* is a matter of fact, according to the value of the estate; against all which, after the rate is made, he ought to have the liberty of appealing. Therefore, on the whole, we are of opinion that the rule must be discharged. *Durnf. and East*, 625.

T. 28 G. 3. *K. v. Cheshunt*. At the sessions for *Hertfordshire*, *Eliab Breton* appealed against a poor-rate for the parish of *Cheshunt*, alledging, that he was overcharged: the sessions ordered that he should be relieved, by being charged at 21*l.* a year, instead of the sum he stood charged with, and that the rate should be amended accordingly. A rule was obtained to shew cause why the order of sessions should not be quashed, on the ground that the sessions could not relieve the appellant without altering the whole rate, and that the whole rate ought to have been quashed on the authority of *K. v. Maddern*. But without argument, the court said, That the case of *K. v. Maddern* could not govern the present, because that was just the reverse of this. There a person had been omitted in the rate; here an occupier was overcharged. They were therefore clearly of opinion, that there was no necessity for the sessions to quash this rate; that they had acted properly in amending it; and that

Rate may be amended in case of any overcharge.

that the 17 G. 3. c. 38, would be nugatory if it did not apply to a case like this. Rule discharged. 2 Durnf. and East, 623.

Long usage.

In the case of *K. v. Hill*, T. 17 G. 3, it was adjudged, that in those places where it has been heretofore the usage to rate persons for their stock in trade, such rate is good. Cowper 613.

Long uninterrupted usage.

And in the case of *K. v. Rudd*, H. 22 G. 3. On the authority of that of *K. v. Hill*, that where it has been the uninterrupted usage and custom of rating this property, such custom is good. Caldecott's Rep. 147.

What kind of chapel is rateable to the poor.

A private building, always used as a chapel, and by contract never to be used for any other purpose, is, if a profit is made of it, rateable to the poor: as determined in the case of *Robson v. Hide*, esq; and another. T. 23 G. 3. Caldecott's Rep. 310.

Salt officers are not rateable for their salaries.

H. 7 G. 3. *K. and the inhabitants of Shelfleet*. *Sherrington's case*. The question was, Whether an officer of the salt office is liable to be rated in respect of his salary?—It was argued, in behalf of the officer, that he is not liable: that assessments for relief of the poor must be made according to the person's visible ability within the place where he inhabits; and without regard to any other estate which he may have in any other town or place: that this is a tax upon the profits of the man's daily labour. On the other hand, it was insisted, that he is rateable for his salary within the meaning of the statutes, which have been always construed with favour and latitude: that it is reasonable, where persons derive a benefit from the parish, that they should submit to the burdens of it: that if the officer becomes chargeable, the parish must maintain him: that every man is, for every sort of personal property which has a certain produce, rateable to the relief of the poor in the parish where he lives: that this is a fixed, certain, permanent produce, as to the value; it is no otherwise casual or contingent, than in respect of the man's continuance in his office; if he ceases to be in office, he will cease to be taxed: that these salaries have been thought to be fit objects of taxation to the land-tax; and there is much stronger reason why they should be so to the poor; they are expressly named in the land-tax acts, which shews they are fit objects of taxation in general. By the court: This species of property is not mentioned in the act; nor has it any analogy to those sorts of property that are mentioned therein. The whole scope of the argument for the taxation is foreign to the question; namely, that a man may be rated in his parish

for his personal estate. Now a man's personal estate is only what he is worth after payment of all his debts; which cannot easily appear, so as to be rated. But that is not the present question. He is here rated for this specific property, as lying in the parish, which he ought not to have been. And we are all of opinion, that this is not such a species of property as can be rated to the relief of the poor, as personal estate within the parish. *Burr. Mansf. 2011.*

H. 29 G. 3. K. v. T. Carlyon, Clerk, and another. Upon an appeal to the quarter-sessions of the county of *Cornwall*, against a rate for the relief of the poor, they confirmed the rate, subject to the opinion of the court, on a case; stating that the appellants were the proprietors of the tithe sheaf of the parish of *Paul*, and also of one tenth of all fish taken, or caught, and brought on shore within the parish; and that they and their tenants were rated as follows: The reverend *Thomas Carlyon* and *Mrs. Veale*, the rectorial tithes of pilchards, 19s. 10½d. *Edward Paddy* (who was a tenant to the appellants) for the tithe of the hook fish, and all other fish, except pilchards and herrings in the village of *Newlyn*, which lies in the parish of *Paul*, 5s. 3½d. *Benjamin Harry, Richard Wright*, and Co. who were also tenants of the appellants for the tithe of hook fish, and all other fish (except pilchards and herrings) in *Moushole*, also within the said parish, 2s. 4d. *John Glasson* (who was also tenant to the appellants) for the tithe of sheaf, 5s. 10d. The only question made was concerning the rateability of fish; and this property having been always rated in the parish of *Paul*, and being a property yielding a certain annual profit, the sessions were of opinion that it was rateable, and confirmed the rate. *Bearcroft* and *Gibbs*, against the order of sessions: The parties ought only to be rated in respect of permanent and visible property within the parish. And as the other nine parts of the fish are not rateable, since the fishermen cannot be rated for their labour, the tenth part, which is paid as tithe, ought to be equally exempt. *Erskine, Jekyll*, and *East*, on the other side, were stopped by the court. *Lord Kenyon*, Ch. J. This question is decided by the express terms of the act of parliament; which, after mentioning parsons and vicars, in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate*, and *appropriations of tithes*, in respect of which the rate is to be made. And indeed the spirit of the law coincides with the words of this statute. For the legislature intended that, when rates are made for the relief of the poor, every person should contribute

Fish are tithe-
able by custom;
and the propri-
etors of such
tithes are liable
to be rated to
the relief of
the poor.

tribute according to the benefit which he receives within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever: then it is said that only property, which is visible, should be rated; but I think that is carrying the rule of exemption too far; for oblations and other offerings, which constitute the rectorial or vicarial dues, are rateable. *Buller, J.* Supposing the fishermen are not rateable for the fish caught, the case of *Rowls v. Gells* governs this. For though the owner of lead-mines is not liable to be rated for them, yet his lessee, who runs no risk, is rateable in respect of the profits arising from *lot and cope*. So here the persons entitled to the tithe of fish run no risk, and their profit is certain: therefore, for that certain profit I think they are liable to contribute to the poor-rates. Order of sessions confirmed. 3 *Durnf. and East*, 385.

E. 17 G. 3. K. v. the inhabitants of Cardington. The tolls taken in a river are rateable. *Cowper*, 572.

Tolls taken in corporations are rateable. 3 *Keb.* 540.

Tolls in corporations.
Tolls of a light-house.
Lands converted into a dock, are rateable.

But tolls of a light-house are not rateable; as in the case of *K. v. Rebow*, *M.* 12 G. 3.

In the case of *K. v. Dock Company of Hull*, *E.* 26 G. 3. Two justices allowed a rate for the relief of the poor of the parish of *Sculcoates*: the sessions confirmed the rate, and stated the following case. That commissioners, in pursuance of an act of the 19 G. 3. purchased lands in the parish of *Sculcoates*, which both before and after the purchase were assessed to the land-tax, and all parochial assessments, in common with other lands within that parish; and that the Dock Company converted three acres two roods and twenty-nine perches of the said land into part of a dock or basin, which in the whole contains ten acres: that the Company in 1783 received a clear profit for tonnage of ships of 3,700*l.* and that they do not owe any money under the authority of the said act: that on the 7th May 1784 a rate was laid on the lands and tenements in the said parish at 1*s.* 4*d.* in the pound, and that part of the dock which lies in the said parish was rated at 800*l.*: 59*l.* 6*s.* 8*d.* It was observed in support of the rate, that the land purchased was assessed both before and after the purchase, and which by improvement produces more than it did before, and the improved value can afford no reason why it should cease to be assessed: the rate had been increased according to the improved value of the land. On the other hand it was said, that this property was rated as *land*, when the act had declared that the shares of the proprietors should be considered

considered as *personal property*. By the court: This is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act. Then the question is, Whether the act exempts this property which was rateable and rated before; but there are no words of exemption; as between the heir and executor this is to be considered as personal property; but the legislature did not intend to alter the nature of it in any other respect. Rate confirmed. 1 *Durnf. and East*, 219.

M. 30 G. 3. K. v. The Inhabitants of St. Agnes. A person entitled to toll tin and farm dues (which are certain portions of the tin raised by the adventurers in the tin mines) is liable to be rated to the poor in respect thereof.
J. Paull and J. Ennor, being occupiers of rateable property in the parish of *St. Agnes*, appealed to the last *Bodmin* sessions against a poor-rate, because *J. P. Andrews*, trustee of *J. Enys*, a minor, was omitted to be rated for the *fee farms of tin* arising out of his premises in *St. Agnes*; and also because *N. Donnithorne* was omitted to be rated for toll-tin raised in the manor of *Tywarnhaile* and *Tywarnhaile Tyas* in *St. Agnes*, and to which they are entitled; when the rate was quashed; subject to the opinion of this court on the following case: *J. P. Andrews* as trustee of *J. Enys* is entitled to a certain dish or measure arising out of certain lands and tin bounds in *St. Agnes*, called toll and farm tin; which toll is one 15th part of all the tin gotten in the lands of *J. Enys* within the parish of *St. Agnes*; and which said farm tin or due is one 12th part, after the said 15th part is deducted, for toll of all such tin so gotten within the tin bounds in the parish; and which said dues or duties are due and payable by the laws and customs of the *stannaries of Cornwall*, free and clear of all risk and deduction whatsoever: but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And *N. Donnithorne* is entitled to a certain dish or measure called *toll-tin or dues*, arising out of certain lands in *St. Agnes*, and due and payable in the manner before stated; and which toll varies, and is uncertain; but also produces a considerable sum annually. On a former day *Morris* moved that this case might be sent down to the sessions in order that *Mr. Andrews* and *Mr. Donnithorne* should be made parties to it. For though it was held in *K. v. Maddern*, that the justices might quash a rate on an objection to it similar to the present, without giving notice of appeal to the party whose name is omitted, yet in this instance the parties below had colluded together, and had consented that the rate should be quashed, subject to the opinion of this court whether *Andrews* and *Donnithorne* ought to be rated on the statement of a case on which they had not been heard. But the court refused to grant the

rule, because those two persons would not be concluded by this determination. as they might themselves appeal against any rate in which they should be hereafter taxed for this property. On this day *Dampier*, in support of the order of sessions, cited *Rowls v. Gells*, as deciding this question; which *Gibbs*, on the other side, admitted. *Morris* again renewed his application; saying that, if he could be made a party here, he should endeavour to shake the authority of that case. Lord *Kenyon*, C. J. said, he approved of the cases of *Rowls v. Gells* and *K. v. Maddern*; though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions. By the court: Order of sessions, quashing the rate, confirmed.

3. *Durnf. and East*, 480.

The profits of
Spa-water are
rateable.

T. 17 G. 3. *K. and Miller*. Case specially stated, Mrs. *Skillicome* of *Cheltenham*, in the county of *Gloucester*, demised to *William Miller*, Esq. of the same parish, certain lands containing about four acres, with buildings thereon, and a certain well of mineral water thereout arising, called the *Cheltenham Spa*, at the yearly rent of 100l: the lands and buildings thereon, exclusive of the well, are of the annual value of about 20l. And the overseers rated him to the poor as for an intire estate of 100l. a year. It was argued, that the mineral water is not an object of taxation. And the usage with respect to other places in different parts of the kingdom was alledged, as at *Matlock*, *Buxton*, and *Scarborough*. None of these were ever rated, and the reason is, because they are not a subject of taxation within the words or meaning of the statute of 43 *Eliz.* By lord *Mansfield*: Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land let to the defendant at 100l. a year; and the value arises, partly from the buildings, and partly from the spring which produces the mineral water. Therefore, the profits of the spring are part of the produce of the land. In *Worcestershire* and *Cheshire*, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land; and therefore, as such, ought to be rated. *Cowper*. 619.

Engine-house
rateable.

In the case of *K. v. John Hogg*, E. 27 G. 3. It was held, That an house and engine for carding cotton, which were rented as one entire subject, and described by the general

neral name of an engine-house, were rateable to the poor.
1 *Durnf. & East*, 721.

In the case of *K. v. St. Nicholas Gloucester*, E. 23 G. 3.
A machine-house for weighing waggons, &c. held rateable.
1 *Durnf. & East*, 723.

In the case of *K. v. Vanderwall*, E. 33 G. 2. It was
adjudged, that the rents and casual profits of a manor are not
rateable to the poor. Lord *Mansfield* said it was so clear,
that there was no need to enter into reasonings about it;
and so far as appeared to the court, such rents and profits
had never before been attempted to be rated. *Blackst. Rep.*
212.

Quit-rents and
casual profits of
manors not
rateable.

Of every occupier] This tax is to be paid by the farmer
or occupier, and not the landlord, who is never to be taxed
for his rent; for then the landlord would pay twice. *Dalt.*
165.

The occupier,
and not the
landlord, is to
be rated.

And the occupier is to be charged with it, because the
poor-rate is not a charge upon the land, but upon the occu-
pier in respect of the land, *Fitz-Gib.* 297. *Case* and
Stephens.

M, 30 G. 3. *K. v. J. Hurdis*. Upon the appeal of
James Hurdis against a poor-rate at the sessions held for the
town and port of *Seaford*, the rate was confirmed, subject
to the opinion of this court on the following case. The ap-
pellant objected to the rate, because one *Isaac Wood*, gun-
ner of his majesty's fort and battery at *Seaford*, who was a
servant to his majesty, and not in his own right the occu-
pier of the dwelling-house thereto belonging, and who there-
fore ought not to have been charged in the rate, was in-
serted therein, and charged as the occupier of the battery-
house. *Wood* was taxed for the battery-house ten shillings.
At the time of making the rate he was, and still is, a head
or master-gunner, and acted as such in the fort or battery of
Seaford. The fort and battery-house are the property of the
crown. A master-gunner is a warrant-officer appointed
and removeable at pleasure by the master-general of the
ordnance; though his office is usually considered as a pro-
vision for life. *Wood*, being so employed in the fort, occu-
pied the whole of the house, except one room, which is allot-
ted to the under-gunner by direction from the ordnance;
and the furniture of this house belonged to *Wood*. The in-
habitants of the town, port, or parish, paying to the poor-
rate thereof, have a right to vote in the election of members
of parliament for the town and port; and the appellant is
an inhabitant of that description. *Beacroft* and *Curties*, in
support of the order of sessions, contended that though the
property

Where the ses-
sions found that
the master gun-
ner at *Seaford*
was the occu-
pier of the bat-
tery-house
there, which
was the property
of the crown,
and from
whence he was
removeable at
pleasure, this
court held that
the fact of his
being the occu-
pier precluded
any other ques-
tion, and fixed
his liability to
be rated to the
relief of the
poor.

property of the crown is not rateable while in the hands of the crown, yet it has been frequently determined, that if any private subject, by virtue of his office, occupies a house belonging to the crown, he is liable to be rated for it. *Rex v. Mathews*, *Cald. 1.* and *Lord Bute v. Grindhall*, The court desired to hear the other side. *Erskine* and *Partington*, on the other side: The cases cited only shew, that where an officer of the crown has any beneficial interest, independently of the immediate execution of his office, arising from the occupation of any rateable species of property, such person is liable to be rated. Upon that principle *Mathews* was held rateable for a lodge and two acres of land: *Mrs. Mostyn*, the wardrobe-keeper at *Hampton Court*, was rated for a meadow belonging to her apartment in the palace; *Lord North* for *Bushy Park*; and *Lord Bute* for certain inclosed lands, part of *Richmond Park*, which he sowed with corn, and of which he reaped the profits. In all those cases there was a clear beneficial interest accruing to the occupiers, which they did not enjoy merely in the due exercise of the functions of their respective offices. But in the case of *lord Amberst v. lord Somers*, where lord *Amberst* only occupied certain rented stables as colonel of a regiment, the court held him not liable to be rated in respect of such occupation. Now that is the case here. *Wood* derives no beneficial interest from his occupation, independently of the necessary functions of his office; it is not optional in him whether he will reside there or not; he is compelled to be there. Therefore he is no more than a mere centinel; and is in the same situation as a soldier in barracks; in *Johnson v. Louth*, the court considered a gunner in the light of a common soldier. He has no permanent enjoyment; but is removeable from place to place, at the will of the master-general of the ordnance. *Wood's* occupation therefore of the battery-house was no more than as a servant of the crown, whose duty compelled him to be there. Lord *Kenyon*, chief-justice: I do not feel that my opinion upon this subject militates against any decided case; but I shall determine upon the ground of positive law, as it is laid down in the 43 *Eliz.* which subjects every occupier of lands, houses, &c. to be rated to the relief of the poor. Now it is expressly stated in the case that *Wood* was the occupier of the battery-house: and though perhaps it might have been contended below that he was not the occupier, in the legal sense of the word, yet the finding of the sessions precludes that question here. It is not however a general position that a servant of the crown occupying a house in respect

respect of his office is not rateable for it; for I was always rated for the house which I had as master of the Rolls: and so are the auditors and tellers of the Exchequer. Soldiers indeed cannot be said to be the occupiers of their barracks, in the legal signification of the word; they are no more than mere servants. And in the case of *lord Amherst v. lord Somers* it appeared that the former was not the occupier of the premises rated. *Ashburst, J.* Wherever persons are stated by the sessions to be the occupiers of crown-lands or houses, they must be rated; though such property would not be rateable in the hands of the king himself. In the same manner, though hospitals, or lands held for their immediate support, are not rateable, yet if any officer of such establishments hold part of the hospital-lands for his own convenience, then he becomes rateable: as in the case of *Eyre v. Smallpace*, where the plaintiff, who was controller of *Chelsea-college*, and resided in the controller's apartments, was held to be rateable as the occupier. Now *Wood* was the occupier in this case; and though he had not a life-interest, yet it is well known that such persons are never dismissed unless for misbehaviour; and even if he were to be considered as a mere tenant at will, that will not vary the case. The other judges concurring, orders confirmed. 3 *Durnf. & East*, 497.

M. 11 G. Theed and Starkey. The lessor covenants with the lessee, to pay all taxes on the lands demised. The lessee brought an action of covenant, and assigned for breach the not paying of the rates to church and poor. Upon demurrer it was objected, that those rates are personal charges, and not on the land: and for that reason the defendant had judgment. 8 *Mod.* 314.

Occupier of lands, houses.] E. 1 Ann. By *Holt*, chief-justice: Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burden upon his neighbours. 2 *Salk.* 527. Hospitals how far rateable.

But with respect to the hospital itself, it was determined, in the case of *St. Luke's hospital for lunatics*, *M. 1 G. 3.* that such hospitals are exempted, excepting only those parts of them which are inhabited by the officers belonging to the hospital; as the chaplain, physician, and the like, in *Chelsea hospital*; and these apartments are to be rated as single tenements, of which the said officers are the occupiers. The reason why the apartments of the sick or mad persons in the present case are not to be rated is, that there are no persons

who can be said to be the *occupiers* of them. For it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital in trust for the charitable purposes to which it is applied, cannot, with any propriety, be considered as the occupiers of it; nor, lastly, can the servants of the hospital, who attend there for their livelihood: and no other persons (said lord *Mansfield*) can with any shadow of reason be considered as the occupiers thereof. *Burr. Mansf. 1053. Blackst. Rep. 249.*

Almshouses.

T. 23 G. 3. K. v. Peter Waldo, Esq. An almshouse, wholly occupied by objects of charity or their attendants, and of which *no profit is made*, though the absolute property of it is in the person who gives the alms, has no legal occupiers; and is not an object of taxation under the poor-laws. *Caldecott's Rep. 358.*

Colleges rateable as a corporation.

In the case of *K. and Gardner, T. 14 G. 3.* It was adjudged, that the master and fellows of *Corporation-hall*, in *Cambridge*, as a corporation, are liable to be rated. *Gowper 79.*

The occupier's interest not material.

It was determined in the case of *Lord Bute v. Grindall and another, T. 26 G. 3.* that to make an occupier rateable, it is immaterial what interest he has in the lands, whether he hold as tenant at will, or any other tenure: it is not necessary to enquire into the occupier's title. *1 Durnf. & East, 338.*

Servants occupying house and land separately.

And in the case of *Old Windsor and Mathews, H. 17 G. 3.* it was adjudged, That servants occupying separately house and land, whether they pay for them by rent or service, are liable to be rated: but royal palaces are not rateable to the poor; nor have they ever been rated. *Caldecott's Rep. 1.*

Stables rented by a colonel by order of the crown.

E. 28 G. 3. Lord Amherst v. Lord Somers and others. The question for the opinion of the court was, Whether stables rented by the colonel of a regiment, by order of the crown, for the use of the regiment, were liable to be rated to the relief of the poor. The court were of opinion that they were not rateable: that neither the possessions of the crown, nor of the public, are liable to be rated to the poor. *2 Durnf. & East, 372.*

Tithes rateable.

In the case of *K. and Turner, H. 4 G.* The defendant being assessed towards the poor-rate for his tithes as vicar, appealed to the sessions, where he is absolutely discharged. But by the court: As vicar he is chargeable by the *43 El.* and the sessions has only power to moderate, but not discharge. And the order of sessions was quashed. *Ser. 77.*

A par-

A parson who lets to each parishioner his own tithes, is properly the occupier, and therefore ought to be rated. 16 *Viner*, 427.

But if a parson makes a lease of the tithes to one person, who afterwards lets the same to each parishioner, in such case the lessee is the occupier, and ought to be taxed. So if a man has a wood, or standing corn, and sells the same standing; the vender is the occupier, and ought to be taxed. 8 *Mod.* 61.

The same was determined in the case of *K. v. the Inhabitants of Lambeth*, T. 8 G. Str. 525.

But though coal-mines are expressly mentioned in the statute, lead-mines are not rateable, as in the following case:

M. 3 G. 3. The Governor and Company for smelting down lead against Richardson and others. A point was reserved before Mr. justice Bathurst, at Carlisle assizes 1761, which was as follows: The defendant had distrained for the poor-rate assessed on the occupiers of the lead-mines lying in the parish of *Alston*; upon which they brought this action. The case states, that the plaintiffs were lessees from *Greenwich hospital*; that they worked the mine, but did not live in the parish of *Alston*; that the profits of the hospital that year amounted to 1900*l.* but those to the plaintiffs, the lessees, were quite precarious and uncertain, and that some years they gained nothing; that no lead-mines had ever been assessed, except in an instance or two since making this distress. By lord *Mansfield* chief-justice: The question is no more than this: Whether a lessee of lead-mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 *Eliz.* Now nothing can be clearer, than that these mines are not within the letter of the statute; for the legislature could never intend by the word coal-mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word mines. So that the expression coal-mines expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expence than coal-mines are. And as all these undertakings were attended with infinite hazard and expence, and often ruined the projectors; it is no improbable conjecture, that the legislature meant for this reason, and in order to encourage them to proceed.

Lead-mines not rateable.

proceed in undertakings of this public utility, to exempt them from any other burden or imposition than those that the miners law had imposed. Mr. justice *Denison* was of the same opinion. By Mr. justice *Wilmot*: There is a material difference between coals and other mineral works. Coals are easily found; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered how dangerous it would be to discourage these kind of adventurers by subjecting them to a tax. *Blackst. Rep.* 349.

Lessee of lead-
mines rateable.

E. 16 G. 3. Rowls and Gells. The plaintiff *Rowls* was lessee under the crown of all lead-mines, together with their appurtenances, within the soak and wapentake of *Wirksworth*, with the *lot* and *cope* within the said soak and wapentake, and was assessed for the same, as for an estate of 500*l.* a year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, dressed and made merchantable at all the lead-mines within the said soak or wapentake; and *cope* is, sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to the plaintiff, who is not at any risk or expence in working the mines, and in that year wherein they were assessed amounted to the clear sum of 500*l.*; but they are uncertain, and vary annually. It was argued, that this species of property is not assessable to the poor; and for this were cited the cases of the *Governor and company for smelting lead* against *Richardson*, and of *K. and Vandewall*. To which it was answered, that both the cases are distinguishable from the present. In *K. and Vandewall*, the court held the quit-rents of a manor were not assessable; but the ground of the decision was, that the land itself was before assessed; and therefore if the lord were liable, it would be a double assessment. In the other case, the mine itself was assessed, which could not be, on account of the great uncertainty and hazard attending the adventure, and lead-mines being excepted by implication in the statute. But here, the mine itself is not assessed, nor are the miners in any respect affected; but it is the share of profit accruing to the lord, which is rated as incident to and in respect of the soil, and by way of recompence for the injury done to the soil.—Lord *Mansfield* delivered the resolution of the court: The poor-rate is not a tax on the land, but a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the

the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead-mines* are not within the statute of 43 *Eliz.* They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are therefore excused. But the person who, if they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable on the same ground, and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor-rate for his visible real property in the parish; though where the poor-tax is a charge on the lessee, the landlord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light; because the lord pays, not for that which the lessee or adventurer is excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it does not prejudice or benefit him. But as such obligatory payment is in respect of the land, the land-owner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence, or possible risk. Therefore we are all of opinion, that the plaintiff is liable to be rated for this property. *Cowper 451.*

The 17 *G. 2. c. 37*, enacts, that, If there shall be any dispute in what parish or place improved wastes, and drained and improved marsh-lands lie, and ought to be rated; the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish or place which lies nearest to such lands; and if, on application to the officers of such parish or place to have them assessed, any dispute shall arise, the justices at the next sessions after such application made, and after giving notice to the officers of the several parishes and places adjoining to such lands, and to all others inter-
ested

ested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. *f. 1, 2.*

The rate may be in the form or to the effect following:

Form of the
rate.

An assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of — in the county of — made and assessed the — day of — being the first rate at 6d. in the pound for the present year —.

	£.	s.	d.
A. Z.	0	4	6
B. Y.	0	3	0
C. T.	0	1	6
D. S.	0	5	6

Assessors A. B. }
C. D. } churchwardens,

J. K. }
L. M. } overseers of the poor,

Two justices to
allow the rate.

The statute of 43 Eliz. directs, that such rate and taxation shall be made, with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division. *f. 1.*

And such consent is usually signified by the justices signing the same, with their allowance thereon, as follows:

Form of consent
and allowance.

We, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do assent unto and allow of this assessment, Witness our hands the — day of —

E. B.
J. C.

But they must
be two justices
out of sessions.

It may be necessary, however, to observe, that this consent and allowance must be given by two justices out of sessions; the sessions having no original power to order an assessment to be made, but only if it come before them by way of appeal; for in such case the party would be deprived of the benefit of appealing. *L. Raym. 798.*

In the case of *K. v. the justices of Dorchester, M. 7 G.* It was holden, that two justices are necessary to sign the rate

rate only by way of form ; for it is the churchwardens and overseers who have the power of making it. *Str.* 393.

And if the justices refuse to sign and allow the rate, the court of King's Bench will grant a *mandamus* to compel them. *Id.*

And in the case of *K. v. Edwards and Symonds, T. 7 G.* 3. The defendants, who were justices of the peace for *St. Ives* in *Cornwall*, had evaded the signing of a poor-rate, in obedience to a writ of *mandamus*, by keeping out of the way, so as to avoid being served with the writ ; and an attachment was granted for the contempt. *Blackst. Rep.* 637.

And may be inspected by any person.

A mandamus will be granted to compel justices to sign.

By the 17 G. 2. c. 3. §. 1, Whereas great inconveniencies often arise by reason of the unlimited power of the churchwardens and overseers of the poor, who frequently, on frivolous pretences, and for private ends, make unjust and illegal rates in a secret and clandestine manner, contrary to the true intent and meaning of 43 *Eliz.* ; for the remedy whereof be it enacted, That the churchwardens and overseers, or other persons authorised to take care of the poor in every parish, township, or place, shall give, or cause to be given, public notice in the church, of every rate for the relief of the poor, allowed by the justices, the next *Sunday* after the same shall have been so allowed ; and that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given. §. 1.

Rate to be published in the church.

And be it further enacted, That the churchwardens and overseers shall permit any inhabitant of the said parish, township, or place, to inspect every such rate at all seasonable times, paying one shilling, and shall upon demand give copies of the same, or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every twenty-four names. §. 2.

And may be inspected by any person.

And if any churchwarden or overseer shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse to give copies thereof, he shall forfeit 20*l.* to the party grieved. §. 3.

Penalty on not permitting persons to inspect.

And by the 17 G. 2. c. 38. §. 4, If any person shall find himself aggrieved by any rate or assessment, or shall have any material objection to any person's being put in or left out of such rate or assessment, or to the sum charged to any person or persons therein ; he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions for the county, riding, division, corporation, or franchise ; but if it shall appear to the justices that reasonable

Appeal against the rate.

And may be inspected by any person.

To whom the
party grieved
shall appeal.

Amending the
rate.

Rates to be
entered in a
book.

Rate to be levi-
ed by distress.

And in any
county or pre-
cinct, by 17G. 2.

sonable notice was not given, then they shall adjourn the appeal to the next quarter-sessions after.

And in this case, in a town corporate, the appeal must be to the corporation justices: but, in the case of an order of removal of a pauper from a town corporate, the appeal must be to the sessions of the county.

On all appeals from rates and assessments the justices shall and are hereby required to amend the same in such manner only as shall be necessary for giving relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then they shall order a new rate to be made. *Id.* s. 6.

And the court may award costs to either party, as in case of appeals concerning the settlement of poor persons, by 8 & 9 W. *Id.* s. 4.

Which, as directed by the statute, shall be recovered by indictment, if the party lives within the jurisdiction of the justices; otherwise by distress, or commitment where no distress is to be had.

And by the statute of 17 G. 2. c. 38. s. 13, it is further enacted, That true copies of all rates and assessments, hereafter to be made for the relief of the poor, shall be fairly wrote and entered in a book to be provided for that purpose, by the churchwardens and overseers, within fourteen days after all appeals from such rates are determined; and they shall attest the same by putting their names thereto; and all such books shall be carefully preserved by the churchwardens and overseers for the time being, or one of them, in some public or other place, whereto all persons assessed or liable to be assessed may freely resort; and shall be delivered over from time to time to the new and succeeding churchwardens and overseers, as soon as they enter into their said office, to be preserved as aforesaid, and shall be produced by them at the sessions, when any appeal is to be heard or determined.

And by the 43 Eliz. c. 2. s. 4, It shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices (1 Q.) to levy the said sums, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale.

Also by the 17 G. 2. c. 38. s. 4, The goods of any person assessed and refusing to pay, may be levied by warrant of distress in any part of the county; and for want of sufficient

cient distress within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant), the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and any person who shall be aggrieved by such distress, may appeal to the next sessions for the county Appeal or precinct where the assessment was made.

But in the case of *Tracy and Talbot, T. 3 Ann. By Holt*, chief-justice, The rate cannot be distrained for by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. *2 Salk. 532.*

Hence it appears, that the nonfeasance of the party shall not be left to the judgment or caprice of the officer, who may from private resentment sell his neighbour's goods without sufficient cause; but oath of refusal must be made before the justices. And it is certainly reasonable that the party should be heard in his defence; for he may shew cause variously why a distress should not be granted: as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

In which case, the form of the summons may be as follows:

Surry. *To A. B. of the parish of — in the said county, yeoman.*

" We whose names are hereunto set and seals affixed, two
" of his majesty's justices of the peace in and for the said
" county, one whereof is of the *quorum*, do hereby sum-
" mon you personally to appear before us at the house of
" — in — in the said county, on — the — day
" of — at the hour of — in the forenoon of the
" same day, to shew cause why you refuse to pay the rate
" or assessment made for the relief of the poor of the said
" parish for this present year; otherwise we shall proceed
" as if you had appeared. Given under our hands and
" seals the — day of — in the year of our Lord —."

And the warrant of distress thereon may be thus:

Surry. *To the churchwardens and overseers of the poor of the parish of — in the said county.*

" Whereas in and by a rate and assessment made, asses-
" sed, allowed, and published, according to the statutes in
" that case made and provided, A. B. an inhabitant and oc-
" cupier

" cupier of an house in the said parish of — was duly rated
 " and assessed for and towards the necessary relief of the poor
 " of the said parish for this present year the sum of 5s. And
 " whereas it duly appeareth unto us, two of his majesty's
 " justices of the peace in and for the said county, one
 " whereof is of the *quorum*, as well upon the oath of C. D.
 " overseer of the poor of the said parish, as otherwise, that
 " the said sum of 5s. hath been lawfully demanded of the said
 " A. B. and that the said A. B. hath refused and doth re-
 " fuse to pay the same: and whereas the said A. B. having
 " appeared before us in pursuance of our summons for that
 " purpose, hath not shewed to us any sufficient cause why
 " the same should not be paid: [or, And whereas it hath
 " been duly proved to us upon oath, that the said A. B.
 " hath been duly summoned to appear before us the said
 " justices, to shew cause why the same should not be paid,
 " but he the said A. B. hath neglected to appear according
 " to such summons, and hath not shewed to us any suffi-
 " cient cause why the same should not be paid.] These are
 " therefore to require you forthwith to make distress of
 " the goods and chattels of him the said A. B. And if
 " within the space of [four] days next after such distress
 " by you taken, the said sum, together with reasonable
 " charges of taking and keeping the said distress, shall not
 " be paid, that then you do sell the said goods and chattels
 " so by you distrained, and out of the money arising by
 " such sale, that you detain the said sum of — and also
 " your reasonable charges of taking, keeping, and selling
 " the said distress; rendering to him the said A. B. the
 " overplus on demand. And if no such distress can be made,
 " that then you certify the same unto us, to the end that
 " such further proceedings may be had therein, as to the
 " law doth appertain. Given under our hands and seals
 " this — day of —."

Distress shall
 not be unlawful
 for want of
 form,

And by the 17 G. 2. c. 38, To prevent all vexatious
 actions against overseers of the poor, be it enacted, That
 where any distress shall be made for any sum of money just-
 ly due for the relief of the poor, the distress itself shall not
 be deemed to be unlawful, nor the parties making it be
 deemed trespassers, on account of any defect, or want of
 form in the warrant for the appointment of such overseers,
 or in the rate or assessment, or in the warrant of distress
 thereupon; nor shall the parties distraining be deemed tres-
 passers *ab initio*, on account of any irregularity which shall
 be afterwards done by the parties distraining; but the par-
 ties

ties aggrieved by such irregularity may recover full satisfaction for the special damage they shall have sustained thereby, and no more, in an action of trespass or on the case. *f. 8.*

Provided, That where the plaintiff shall recover in such action, he shall be paid his full costs. *f. 9.*

Provided nevertheless, That no plaintiff shall recover in any action for any such irregularity, if tender of amends has been made by the party distraining, before such action brought. *f. 10.*

Also by the 43 *Eliz. c. 2. f. 4.* In defect of distress, two Commitment on justices may commit such person to the common gaol, there failure of distress. to remain without bail or mainprize, until payment of the same.

And by the 17 *G. 2. c. 38. f. 11.* If any person shall neglect or refuse to pay to such overseers, any sum of money which he shall be legally rated or assessed to, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be due to them in their accounts. Arrears levied by the succeeding overseers.

If a person charged shall die before payment (which is no uncommon case) it has been doubted whether the goods of the deceased, in the hands of the executor or administrator, are liable to answer the same. In the case of *Stephens v. Evans* and others, *E. 1 G. 3, William Vesey* was assessed to the poor-rate, and died intestate. Administration of his goods was granted to *John Stephens* the plaintiff: after which two justices executed a warrant, in which warrant the said assessment was recited, and in such warrant it was also recited, that it appeared to the justices, on the oath of the late overseer, that the sum assessed had been demanded of the said *William Vesey*, and (since his decease) of his widow and representative *Susanna Vesey*, and that they refused to pay the same; therefore the justices require the officer to distrain the goods and chattels of the late *William Vesey*. An action of trover was brought by *Stephens* the administrator, and a special case was stated for the opinion of the court; and the question as stated was, Whether the distraining and taking and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff his administrator, by virtue of the said warrant, was lawful or not. After much argument on both sides, the court gave judgment for the plaintiff the administrator. *Blackst. Rep. 284.* —But this case was determined on its own peculiar circumstances, namely, for want of summoning the administrator; the principal point therefore remains undetermined. The

opinion of the court as to the general question did not clearly appear, from what was advanced by the judges, during the trial.—Mr. justice *Denison* said, “The question is confined to the levying the money upon the representative of the person charged. The statute of 43 *Eliz.* considers the person rated and refusing to pay, as an offender; and it gives no authority but to distrain the goods of the offender: therefore no goods are liable to be distrained by the words of this act, but the goods of the offender himself. I never apprehended that the goods of the person assessed to the rate can be charged in the hands of the representative.”—Mr. justice *Wilmot* observed, “I have not the least doubt but that the representative ought to have been convened before the justices, and asked what he had to say why he should not pay the rate assessed upon *Vesey* his intestate. If the money had been demanded of the representative, I should have had great doubt whether this warrant and distress would not have been good: for I cannot think that by the death of the person charged with this rate, the assessment before made upon him, and demanded of him, would have been quite gone and lost to the parish, and could not have been any way come at. For, though it be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And though he be called an offender, if he refuse to pay it, he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded.”

Removing the
poor-rate by
certiorari.

In the case of *K. v. the justices of Salop*, it was observed, that the true objection against a *certiorari* is, that, if rates were removeable, the poor might be starved while the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. 1 *Seff. C.* 201. *Str.* 973.

And in the case of *K. v. Uttoxeter*, *E.* 5 *G.* It was held, that a *certiorari* would not lie to remove the poor-rate itself; the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming to an equal rate; but, if the rate itself should be required to be sent up, great delays and inconveniencies would ensue. *Str.* 932.

2. *Taxing other Parishes in aid.*

By the 43 *Eliz. c. 2. s. 3*, it is enacted, That if the said justices perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, then the said two justices, (one 2.) shall tax, rate, and assess as aforesaid, any other of other parishes, or out of any parish within the hundred where the said parish is, to pay such sums of money to the churchwardens and overseers of the said poor parish for the said purposes, as the said justices shall think fit, according to the intent of this law.

The said two justices.] In the case of *K. v. Griesly, T. 2 Jac.* The sessions rated the adjacent parishes: quashed, because the statute appoints it to be done by *two justices*; and hereby they prevent an appeal. *Cas. of S. 259.*

T. 12 G. 2. The case of the parish of *St. Peter and Paul* in *Marlborough*. Two justices, after reciting the inability of the parish of *St. Mary the Virgin* to maintain its own poor, ordered the churchwardens and overseers of *St. Peter* and *St. Paul* to assess, raise, and levy 60*l.* for the maintenance of the poor of the other parish. And objection being made to their ordering such a gross sum, the court held it well in that respect, according to *1 Vent. 350. Salk. 480. Comb. 309.* But then the order was quashed, because the justices had delegated their power of assessing and rating the parishioners to the churchwardens and overseers; whereas by the stat 43 *Eliz. c. 2.* the justices are to make the rate on all, or particular persons. *Str. 1114.*

The justices are to make the rate.

And in this case a *mandamus* was moved for to the justices, to make a rate for the support of the poor of the parish of *St. Mary*, which was opposed, alledging that the parish officers ought to make the rate, and the justices are only to sign it. But it was answered, that this motion was grounded on this clause of the statute; and thereupon a *mandamus* was granted, directed to the justices; and as this is a matter of right, they ought to make a return. *16 Vin. 416.*

The justices are to make a taxation, and the churchwardens and overseers are to levy it. *2 Salk. 480.*

The justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb. 309. M. 32 C. 2.*

And in the case of *K. v. Boroughfen, T. 12 G.* Where there was a taxation of several persons in a parish; it was objected, that it should be of all the persons in a particular place

Justices may tax particular persons,

place or parish. The court indeed thought it unreasonable that several persons in a parish should be charged, and not all; but as the words of the statute are very strong, they did not quash the order for this objection. *Foley, 29.*

If it does not appear upon the order of two justices, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred, the court will quash such order. As in the case of *Boroughfen and St. John's, T. 9 Ann. Foley 27.*

So in the case of *St. Stephen, St. Mary Magdalen, and St. Benedic, Norwich.* For in *Norwich* there is no hundred. By *Holt*, chief justice. *Foley 31.*

But where a term equivalent to *hundred* is used, it has been determined otherwise. *E. 31 G. 2. K. v. the tything of Milland.* Two justices tax the inhabitants of the tything of *Milland*, in aid of the parish of *St. Peter Cheeseshill* in the same county, the sessions confirm the order, setting forth the tithing of *Milland*, and the parish of *St Peter Cheeseshill*, both lie in the same liberty of the *soak* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, though called by another name. And the court held, that they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. The orders were affirmed. *Burr. Mansf. 576.*

Justices if they see occasion, may extend such rates to any part of the county.

By the 43 *Eliz. c. 2. s. 3*, If the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid, then the justices, at their general sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the county for the purposes aforesaid.

T. 3 G. K. v. Percivall. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge persons out of the hundred, till two justices have inquired whether any parish in it can contribute: the first application to be to two justices, and the second to the sessions. *Parker, Ch J.* I cannot see to what purpose it would be, for the two justices to make an order to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, the sessions must inquire into the truth of it; and if no order appears, which charges

charges any parish within the hundred, it is a sufficient ground for the sessions to act. Had the two justices charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred.—*If the said hundred shall not be thought by the said justices able*; that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication. *Eyre J.* Here are two jurisdictions; that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from an adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. *Str. 56.*

3. *Reciprocal Obligations from and to Parents and Children to maintain each other.*

By the 43 *Eliz. c. 2. s. 7*, it is enacted, That the father and grandfather, the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed; on pain of 20s. a month.

And such penalty shall be to the use of the poor of the same parish, and be levied by one or more of the churchwardens, by warrant from two such justices (one *Q.*) by distress; or in defect thereof any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeitures shall be paid.

If a father be living, but unable, the grandfather, being of ability, may be compelled to keep the grand-child, and also to pay so much money as the justices shall think reasonable for the time past. *M. 6 Ann. Q. v. Joyce, 16 Viner, 423.*

In the case of *Q. v. Clenham, T. 9 Ann.* It was adjudged by the whole court, that the husband ought to provide for the daughter-in-law during the wife's life, in right of his wife; but, when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter-in-law after her mother's death. *Foley 31.*

And in the case of *Q. v. St. Botolph's, Aldgate, E. 10 Ann.*

Parents and children shall mutually aid each other.

Where a father is unable, the grandfather shall keep the child.

A man not obliged to provide for his daughter-in-law, after her mother's death.

Children by a former husband.

It was resolved, that a husband shall be chargeable to maintain his wife's children by a former husband, during her life, in her right, but not after. *Foley* 42.

H. 12 Ann. 2. v. Hallifax. Order for the father-in-law to pay so much a week to his daughter-in-law, was quashed, because it was not said that he was of a sufficient ability, as the statute requires. *Cas. of S. 52.*

Order of sessions to set forth, that the party is not able to work.

And an order of sessions for the father to pay so much a week for maintenance of his daughter, was quashed, because it was not set forth that *she was not able to work*, without which the justices have no jurisdiction. *E. 1 G. K. v. Gully.*

M. 7 G. 2. K. v. Dempson. An order made on the father to maintain the son's wife after a divorce *a mensa et thoro*, for adultery, was quashed on the authority of the *K. v. Munden*, she not being a natural relation of the father. *Str. 955.*

Son-in-law not obliged to provide for his wife's poor mother.

T. 5 G. K. v. Munden. An order reciting that the defendant had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her; and in maintenance of the order, 1 *Bulst.*—and 2 *Bulst.* 345. and *Styles* 284, were cited. *Prait, Ch. J.* On consideration we are all of opinion, that the son-in-law is not bound either within the words or intent of the statute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother; but there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament; and that can be extended no farther than the law of nature went before; and the law of nature does not reach to this case. We are of opinion the order must be quashed. *Str. 190.*

Mother or grandmother marrying again.

If a grandfather or grandmother marries again, who was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this, being a debt of hers when single, shall like others extend to charge the husband; but, at her death, the relation being dissolved, the husband is under no further obligation. 1 *Blackst.* 448.

Reputed father.

The reputed grandfather or grandmother, are not within the statute; for a bastard is *filius populi*. 2 *Bulst.* 344. *K. v. Reeve. M. 7 C.*

It is observable that the statute of the 39 *Eliz. c. 3*, enacted, That (only) parents and children should mutually maintain each other; but the state of the 43 *Eliz.* extends it to grand-

grandfathers and grandmothers, but does not specify grandchildren.

But it was observed, by *Holt*, chief-justice, (in the case of *Walton and Spark, E. 7 W.*) That the word *children*, in the statute, extends to grandchildren; because there is the same natural affection. *Caf. of S. 210.* But this point does not seem to have been judicially determined.

Children in 43 Eliz. also extends to grandchildren.

M. 13 W. St. Andrew's Underbass v. Jacob Mendez de Breta. The defendant was a jew, and had an only daughter, who had embraced christianity: in consequence of which the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they, reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month. But, because they did not alledge that she was poor, or likely to become chargeable, the order was quashed. *L. Raym. 699.*

An order of sessions quashed for not stating that the pauper was poor.

And it has been held, that in the order of sessions, it ought to appear, that the party to be relieved is become chargeable to the parish; for otherwise the parish has no ground of complaint. *16 Viner, 424. K. v. Tripping.*

Order of sessions to state the pauper to have become chargeable.

In *Jenkins's case, E. 5 Ann.* An order of sessions was made, that the defendant should pay 2s. a week toward the support of his father, till that court should order the contrary. And this was held good, because it was indefinite, no set time being limited: and if an estate happened to fall to him, they might apply to the justices; otherwise, if a time was limited. *2 Salk. 534.*

An indefinite order is good.

The justices cannot send the grandchildren to the grandmother, to be by her taken care of; but they ought to make a rate upon the grandmother of so much a week. *T. 9 Ann. 2. v. Jones. Foley 41.*

Justices not to send the grandchildren to the grandmother, but make a rate.

The statute expressly says the rate shall be ascertained, by the justices of that county where such sufficient persons dwell. Consequently, if the child shall live in *Middlesex*, and be maintained by the parish there, and the grandfather shall live in *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make order. *2 Bulst. 436.*

By what justices the rate shall be made.

On pain of 20s. a month] *T. 32 & 33 G. 2. K. and Robinson.* The defendant was indicted for refusing to obey an order of sessions, for the maintenance of his two infant grandchildren. It was moved in arrest of judgment: and urged, that this is a new offence: and that where a statute creates

a new offence, gives a particular penalty, and a specific method of recovering that penalty, that course should be pursued, and the party not indicted. By lord *Mansfield* chief-justice: The rule is certain, that where a statute creates a new offence, by prohibiting and making unlawful what was lawful before, and appoints a specific remedy against such new offence, by a particular method of proceeding; that method only must be pursued; but where the offence was antecedently punishable by common law, and a statute prescribes a particular remedy by a summary proceeding; either method may be pursued, the prosecutor being at liberty to proceed either at common law, or in the method prescribed by the statute. In the present case, a remedy existed before the statute of the 43 *Eliz.* For disobedience to an order of sessions is an offence indictable at common law. Here are therefore two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is not made; the other, to distrain for the 20s. penalty after neglect of payment for a month. The former method has been adopted in the present case: and there is no doubt but that an indictment will lie for disobeying an order of sessions. The court were therefore unanimously of opinion, that the judgment ought not to be arrested. *Burr. Mansf. 799.*

Parents running away, leaving their wives and children.

By the 5 G. c. 8. s. 1, Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children upon the charge of the parish, though such persons have some estates which would ease the parish of their charge in whole or in part: It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at the next quarter-sessions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers, to dispose of such goods or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid.

And

And the said churchwardens and overseers shall be accountable to the justices at the quarter-sessions for the money they shall so receive. *f. 2.*

And all persons who run away and leave their wives or children, whereby they become chargeable to any parish or place, shall be deemed rogues and vagabonds; and punished as such by the vagrant act of the 17 G. 2. c. 5. Parents running away deemed rogues and vagabonds.

And by the same statute, All persons who threaten to run away and leave their wives or children to the parish, shall be deemed idle and disorderly persons; and shall on conviction before one justice, by confession, or oath of one witness, be committed to the house of correction, there to be kept to hard labour for any time not exceeding one month. Threatening to run away.

Form of an order to seize the goods, and receive the rents of the lands and tenements, of parents or husbands who have ran away.

Surry.] *To the churchwardens and overseers of the poor of the parish of — in the said county.*

“Whereas it appears unto us whose names are hereunto set and seals affixed, two of his majesty’s justices of the peace for the said county, as well upon the complaint and application of the churchwardens and overseers of the poor of the parish of — aforesaid, in the county aforesaid, as upon due proof upon oath before us made, that *A. B.* late of the parish of — aforesaid, in the county aforesaid, yeoman, hath gone away from his place of abode at — in the parish aforesaid, into some other county or place, and hath left — his wife, and — their children, upon the charge of the parish of — aforesaid, the place of their last legal settlement, and that the said *A. B.* hath some estate whereby to ease the said parish of their said charge, in whole or in part; we do hereby authorize and command you the said churchwardens and overseers of the poor of the parish of — aforesaid, to take and seize — and — and —, and to receive the annual rents and profits of the lands and tenements of him the said *A. B.* at — aforesaid, for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children: and with this warrant you are to appear, at the next quarter-sessions of the peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under our hands and seals, at — in the said county, the — day of — in the year —.”

IV. Of

IV. Of the Relief, and Management of the Poor.

Order to be
taken therein

The 43 *El. c. 2*, enacts, That the churchwardens and overseers, with the consent of two justices (1 *Q.*) shall take order from time to time, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work.
f. 1.

And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid.

f. 4.

M. 3 G. K. v. The inhabitants of Hyworth. An order was made to pay 3s. weekly to *A.* by the parish of *Hyworth*, so long as he should continue poor. It was urged that by the 43 *Eliz. c. 2*, it ought to appear, that they are poor and impotent. 1 *Keb. 489.* 2 *Keb. 744. 643.* An order for a father to pay so much to his daughter was quashed, because it was not said poor and impotent, but only that she was in a poor and destitute condition, and wanted relief. 5 *Mod. 197.* And poor is to be understood, poor and old, poor and blind, poor and impotent. *Parker*, chief-justice: I favour these orders as much as I can, because no body takes care to draw them up for the poor; but it must be quashed.
Str. 10.

In *Easter, 3 G.* in the case of *K. v. the inhabitants of Stoke-Ursey*, an order was quashed, on the authority of this case, for the same fault; as was also an order to maintain a daughter-in-law in the case of the *K. v. Tipper. E. 5 G. Str. 10.*

Setting up
trades

By the 3 *C. c. 4*, The churchwardens and overseers may, by the consent of two justices (1 *Q.*) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery or occupation, only for the setting on work and better relief of the poor. *f. 22.*

Erecting cot-
tages for the
impotent poor.

And by the 43 *Eliz. c. 2. f. 5*, The churchwardens and overseers, or the greater part of them, by leave of the lord of the manor, whereof any waste or common within the pa-
rish

rish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor.

And by the 9 G. c. 7. s. 4, The churchwardens and overseers, in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ them, and take the benefit of the work, labour, and service of any such poor persons, who shall be maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be there maintained. And any poor person who shall refuse to be lodged, kept, or maintained, in such house or houses, shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers.

Overseers may contract for the maintenance and employment of the poor.

And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, &c. with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships, or places, in vestry, or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice dwelling in or near any such parish, &c. signified under his hand and seal, to unite in purchasing, hiring or taking such house for the lodging, keeping and maintaining of the poor of the several parishes, &c. so uniting, and there to keep, maintain, or employ the poor of the respective parishes, &c. so uniting, and to have the benefit of the work, labour or service of any poor there maintained, for the better maintenance and relief of the poor there maintained and employed. And if any poor in the respective parishes, &c. so uniting, shall refuse to be lodged, and maintained in the house hired or taken for such uniting parishes,

Two or more places may join

parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief. *Id.*

And it shall be lawful for the churchwardens and overseers of any parish, township or place, with the consent of the major part of the parishioners or inhabitants of the said parish, &c. where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled; upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, &c. for the lodging, maintaining or employing of any poor persons of such other parish, &c. as to them shall seem meet. And if any poor person of such other parish, &c. shall refuse to be lodged, maintained and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief; provided that no poor person, his apprentice or child, shall acquire a settlement in the parish, &c. to which he shall be removed by virtue of this act, but his settlement shall be and remain, in such parish, town, or place, as it was before removal. *Id.*

M. 7 G. 3. K. and Carlisle. The defendant was indicted for disobeying an order of sessions. The case was as follows: *Jane Carr* the pauper, having been delivered of two bastard children, was taken into the poor-house of the parish of *St. Mary in Carlisle*, which had been there established according to the 9 G. c. 7. She and her children were maintained there for a year and an half. The parish officers then agreed to allow her one shilling a week, towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor-house. She requested them to take one child, and said she would take care of the other. That being refused, she offered to take only sixpence a week. But they persisted in giving her no relief, unless she would come again into the poor-house. She therefore applied to the general quarter-sessions for the county of *Cumberland*; who made an order on the churchwardens and overseers to pay her one shilling a week, towards the maintenance of herself and her two bastard children, until further order. She served the defendant, (one of the overseers,) with the order; and demanded payment, which he refused, but again offered to take her and her children into the poor-house. The question reserved at the assizes for the opinion of the judges was, Whether, under these circumstances, the defendant was by law impowered to refuse payment of such weekly allowance? And the case being laid

laid before the judges, they were all of opinion, upon considering the words of the statute, that under the circumstances of this case, the defendant was by law impowered to refuse payment of such weekly allowance.

In the case of *K. v. North Shields*, H. 20 G. 3. *Willes*, justice, delivered the judgment of the court, as follows: I, and my two brothers (lord *Mansfield* being absent) are satisfied that no appeal lies from an order of maintenance. The statute of 3 W. c. 11. s. 11, gives a concurrent jurisdiction in the making orders for the relief of the poor, in or out of sessions, and does not authorise an appeal. The act of 9 G. c. 7, makes no alteration in this respect. The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense. *Douglas*, 316. *Caldecott's Rep.* 68.

No appeal lies for an order of maintenance.

T. 26 G. 3 *K. v. John Fearnley*. This was a demurrer to an indictment found against *Fearnley*, who was overseer of the poor of the township of *Checkheaton*, for disobeying an order of two justices, for the payment of 1s. 6d. a week to *Sarah Firth* for the maintenance of herself and her bastard child. One objection was; there was a mistake in the caption of the sessions where the indictment was found, the word *July* being inserted instead of *October*, which the court adjudged to be fatal. It was also objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the court were of opinion, that the sum which was ordered to be paid weekly, was due at the beginning of the week. *Durnf. and East*, 316.

On an order for relief weekly, the money is due the beginning of the week.

The 3 W. c. 11. enacts, That there shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity, and yearly in *Easter* week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collections to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection.

Names of persons relieved to be entered in a book.

And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential

No others to be relieved, but by order of the justices.

tilential diseases, plague, or small pox, for such families only as shall be therewith infected. *Id.*

Pauper on oath
to shew a rea-
sonable cause.

And by the 9 G. c. 7. s. 1, No justice shall order relief to any poor person till oath shall be made before him of some matter which he shall judge a reasonable cause for having such relief; and that such person had by himself, or some other, applied for relief to the parishioners at some vestry or other public meeting, or to two of the overseers, and was by them refused to be relieved; and till such justice has summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear.

And by the same statute, s. 2, the person whom such justice shall think fit to order to be relieved, shall be entered in such book, as one who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except on sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person not registered in such book, as one intitled to receive collection, on pain of 5*l.* by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; to be applied to the use of the poor by direction of the justices.

Persons relieved
to be badged.

Moreover, by the 8 and 9 W. c. 30. s. 2, Every such person on the collection, who shall receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall on the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: and if any such person shall neglect or refuse to wear any such badge or mark, one justice may punish such offender, by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipped and kept to hard labour, not exceeding twenty-one days: and if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20*s.* by distress; half to the informer, and half to the poor.

Spirituous li-
quors not to be
sold in work-
houses.

The 24 G. 2. c. 43, enacts, That no spirituous liquors shall be sold or used in any workhouse, or house of enter-
tainment

tainment for parish poor. For the particulars of which, see title SPIRITUOUS LIQUORS.

V. Of Removals.

1. Order of Removal in general
2. Order of Removal of Certificate Persons.
3. Of Appeal against an Order of Removal.

1. Order of Removal in general.

By the 13 and 14 C. 2. c. 12. Whereas poor people are not restrained from going from one parish to another, and therefore they endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy; and, when they have consumed it, then to another parish, and at last become rogues and vagabonds; it is therefore enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice, within forty days after any such person coming so to settle in any tenement under the yearly value of 10*l*. for any two justices (one 2.) of the division where any person likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. *s. 1.*

On complaint of the churchwardens or overseers, one justice may, within forty days after his coming to settle in a tenement under 10*l*. a year value, remove him.

And by the same statute, *s. 3.* If any such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond.

And if he shall not go, he shall be punished as a vagabond.

And by the 17 G. 2. c. 5, Persons unlawfully returning to the parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place to which they belong, shall be deemed idle and disorderly persons; and one justice may commit them (being thereof convicted before him, by his own view, confession, or oath of one witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month.

How punished by the 17 G. 2.

If the churchwardens and overseers of the parish to which such person shall be removed, shall refuse to receive him, and

Churchwardens, &c. refusing to receive him.

and to provide work for him, as other inhabitants of the parish, any justice of that division shall bind any such officer, in whom there shall be default, to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

Penalty on not receiving him by 3 W.

And the 3 W. c. 11, enacts, That if any person shall be removed by virtue of this act, from one county, riding, city, town-corporate, or liberty, to another, by warrant of two justices, the churchwardens or overseers of the parish or town to which such person shall be so removed, are required to receive him: and if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses, before one justice of the peace to which the person shall be removed) forfeit for each offence 5*l.* to the use of the poor of the parish or town from which such person was removed; to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of such distress, the said justice shall commit the offender to the common gaol for forty days. s. 7.

On complaint, to one justice two justices are to act.

The statute of 13 & 14 C. 2. c. 12. s. 1, says, *Upon complaint made by the churchwardens and overseers of the poor of any parish to any justice of the peace: But by these words one justice has cognizance of the matter only so far as concerns the complaint: he may issue his warrant to bring the party before him in order to be examined; or he may issue his warrant to bring the party before himself and another justice, that the complaint may be heard and determined; for he cannot alone hear and determine: it is therefore usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. But, if the party is willing, he may go voluntarily before the justices, at the request of the overseers; in which case no warrant will be required.*

The form of the warrants or precepts abovementioned, where they are necessary, may be to the effect following:

Warrant of one justice for a person to be examined respecting his settlement.

Surry.] To the constable of ———

Warrant of one justice.

“Forasmuch as complaint hath been made before me
“ ——— one of his majesty’s justices of the peace in and
“ for the said county, by the churchwardens and overseers
“ of the poor of the parish of ——— in the county afore-
“ said, that *A. B.* hath come to inhabit in the said parish,
“ not having gained any legal settlement therein, nor pro-
“ duced

"duced any certificate owning him to be settled elsewhere,
 "and that the said *A. B.* is likely to become chargeable to
 "the said parish of ——— These are therefore to require
 "you to bring the said *A. B.* before me, to be examined
 "concerning the place of his last legal settlement. Herein
 "fail you not. Given under my hand and seal the ——— day
 "of ———."

Warrant of two justices respecting the adjudication.

Surry.] To ———

"Forasmuch as complaint hath been made before us Warrant of two justices concerning the adjudication.
 "two of his majesty's justices of the peace in and
 "for the said county, and one of us of the *quorum*, by the
 "churchwardens and overseers of the poor of the parish of
 "in the said county, that *A. B.* hath come to
 "inhabit in the said parish, not having gained any legal set-
 "tlement therein, nor produced any certificate owning him
 "to be settled elsewhere, and that he the said *A. B.* is likely
 "to become chargeable to the said parish of ——— These are
 "therefore to require you to bring the said *A. B.* before us
 "at the house of ——— in ——— in the said county, on
 "the ——— day of ——— at the hour of ——— in the after-
 "noon of the same day, to be examined concerning the place
 "of his last legal settlement, and to be further dealt withal
 "according to law. "Given under our hands and seals
 "the ——— day of ———"

It may not be improper, especially in cases of doubt or difficulty, to give notice to the overseers of the place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; as their attendance might sometimes prevent appeals from such adjudications and orders. And such notice may be to the following effect:

Summons to shew cause against an order for removal.

Surry.] "To the churchwardens and overseers of the Summons to shew cause.
 "poor of the parish of ——— in the county of ———
 "and to every of them.
 "This is to summon you, or some of you, to appear (if
 "you shall so think proper) before ———, and such other
 "his majesty's justices of the peace for the said county of
 "S. as shall be at the house of ——— in ——— in the
 "VOL. III. (34.) F f "said

“ said county of *S.* on the day of at the
 “ hour of in the afternoon of the same day, to shew
 “ cause why *A. B.* should not be removed from the parish
 “ of in the said county of *S.* to your said parish of
 “ Given under hand and seal, this day
 “ of in the year of our Lord ”

And the general form of an order of removal, grounded on the statute of the 13 & 14 C. 2, may be as follows :

Form of a general order of removal.

Surry.] “ To the churchwardens and overseers of the
 “ poor of the parish of *Lambeth* in the said county of *Surry*,
 “ and to the churchwardens and overseers of the poor of the
 “ parish of *Chelmsford*, in the county of *Essex*, and to each
 “ and every of them.

“ Upon the complaint of the churchwardens and over-
 “ seers of the poor of the parish of *Lambeth* aforesaid in the
 “ said county of *Surry*, unto us whose names are hereunto
 “ set, and seals affixed, being two of his majesty’s justices
 “ of the peace in and for the said county of *Surry*, and one
 “ of us of the *quorum*, that *Charles Harrison*, *Ann* his wife,
 “ *William* their son aged nine years, and *Elizabeth* their
 “ daughter aged five years, have come to inhabit in the
 “ said parish of *Lambeth*, not having gained a legal settle-
 “ ment there, nor produced any certificate owning them or
 “ any of them to be settled elsewhere, and that the said
 “ *Charles Harrison*, *Ann* his wife, and *William* and *Eliza-
 “ beth* their children, are likely to be chargeable to the said
 “ parish of *Lambeth*; we the said justices, upon due proof
 “ made thereof, as well upon the examination of the said
 “ *Charles Harrison*, upon oath, as otherwise, and likewise
 “ upon due consideration had of the premises, do adjudge
 “ the same to be true; and we do likewise adjudge, that the
 “ lawful settlement of them the said *Charles Harrison*, *Ann*
 “ his wife, and *William* and *Elizabeth* their children, is in
 “ the said parish of *Chelmsford*, in the said county of *Essex*:
 “ we do therefore require you the said churchwardens and
 “ overseers of the poor of the said parish of *Lambeth*, or some
 “ or one of you, to convey the said *Charles Harrison*, *Ann*
 “ his wife, and *William* and *Elizabeth* their children, from
 “ and out of the said parish of *Lambeth* to the said parish of
 “ *Chelmsford*, and them to deliver to the churchwardens and
 “ overseers of the poor there, or to some or one of them,
 “ together

" together with this our order, or a true copy thereof, at the
 " same time shewing to them the original ; and we do also
 " hereby require you the said churchwardens and overseers
 " of the poor of the said parish of *Chelmsford*, to receive
 " and provide for them as inhabitants of your parish. Given
 " under our hands and seals the day of in the
 " year of the reign of his said majesty king *George*
 " the third."

Surry.] In the case of *K. v. the parish of St. Stephen*, *The county*
T. 2 G. 2. An order of removal was moved to be quashed, *should be men-*
 because it was only said in the margin the town of *Bedford*; *tioned in the*
 it being necessary to mention in what county this *Bedford* *order of re-*
 lay, as the appeal must be to the justices of the county where *moval.*
 it lies. The court was clearly of opinion that the order
 ought to be quashed, but they did not quash it, on account
 of a flaw in the *certiorari* by which it was removed. *1 Bar-*
nard, 177, 196.

Churchwardens and overseers of the poor of the parish of
Lambeth] If a place is extraparochial, and has no over-
 seers, the justices cannot remove from thence, because there
 are none to complain or to convey ; but the justices ought
 first to appoint overseers, and then to remove. *2 Salk. 487.*
Foley. 97, 98

Of the parish of Lambeth in the said county of Surry] *County should*
 It is not sufficient that the county be in the margin, but it *be mentioned*
 must appear in the body of the order that the place is in *or implied in*
 such county, either expressly, or by some words of reference ; *the body of the*
 as in the said county, or in the county aforesaid. *Cas. of S.*
151. 2 Sess. C. 181. *order.*

And to the churchwardens and overseers of the poor of the
parish of Chelmsford, in the county of Essex] The justices
 cannot send from an extraparochial place, unless they have
 overseers, nor to an extraparochial place, which has no over-
 seers, because there are none to receive them. *2 Salk. 487.*
Foley. 97, 98.

E. 1 G. St. George's and St. Olave's. Two orders were
 returned, the first for settling a poor man, one *Thomas Gill*,
 and the second a confirmation of the first, on an appeal to
 the quarter-sessions : the first order recited, " That whereas
 " complaint has been made to us, &c. that *T. G.* had of
 " late intruded into the parish of *St. George*, we adjudge
 " him to be last legally settled at *St Olave* : these are there-
 " fore to require you to convey the said *T. G.* to the parish

"of St. Olave;" and the direction on the order was, "To the churchwardens and overseers of the poor of the parish of St. Olave." The order was quashed: for they ought, and can only order the parish-officers where the intrusion is made, to make the removal. 2 Salk. 493. *Id.* vol. 3. p. 257.

Of the parish of Chelmsford] E. 11 Ann. *Spitalfields and Bromley*. A pauper was sent to the parish of *Stepney*, who did not appeal. On removal of the order into the court of King's Bench, exception was taken, that the removal ought to have been to the township of *Spitalfields*; *Stepney* being divided into four townships, and the poor having been removed from one township to another in the same parish, and the statute takes notice of townships as well as parishes, and *Spitalfields* is a hamlet of *Stepney*. By the court: If a person is removed to a wrong place, that place ought to appeal, and *Stepney* ought to have done so if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices are not obliged to take notice of the division of parishes into townships and villages, which maintain their own poor severally and distinctly; and *Stepney* here, upon an appeal, might have shewn that the person belonged to the township of *Spitalfields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole parish (though so divided), and have a superintendency over the whole villages and townships. 18 *Viner*, 468.

Upon the complaint of the churchwardens and overseers of the poor] In the case of *K. v. Hareby*, H. 12 G. 2, It was moved to quash an order of removal, because it did not set forth any complaint made: and by the court, The objection is fatal, for the complaint is the foundation of the justices jurisdiction. *Andr.* 361.

E. 1 Ann. *Weston Rivers and St. Peter's*. Exception to an order of removal, because it was said to be upon complaint only, and not of the churchwardens or overseers. By the court: This exception is fatal; for no person can disturb a man coming into a parish but those that have authority to do it: a complaint from one not concerned is nothing; it may be the parish is willing to keep him. 2 Salk. 492.

Two of his majesty's justices of the peace] An order was quashed,

quashed, because it did not appear to have been made by two justices: it ran thus: Whereas complaint hath been made unto us; without reciting their authority as justices. 5 Mod. 322.

H. 4 G. K. v. Westwoodbay. In an order of removal the complaint was recited to be made to *one justice* only; but the ordering part was by *two justices*, and this was held good. Otherwise where one justice sets his hand to the order in the absence of the other. *Cas. of Settl.* 107. *Str.* 73.

In the case of *K. and Wykes. T. 11 G. 2.* It was held, that though the complaint may be to *one justice*, yet the examination ought to be by *two*, and the same two who sign the order of removal. *Str.* 1092.

M. 12 Ann. 2. and Uplin. The order was quashed, because it did not say that they were *justices of the peace*, but only *justices of the county.* *Cas. of S.* 27.

In and for the said county] In the case of *K. v. Owlton, M. 13 G.* Exception was taken to an order for saying—unto us two of his majesty's justices of the peace in the county aforesaid; for by this it appears only that they lived in the county, and not that they were justices for that county: and the court held this to be a fatal exception, and quashed the order for that cause. 2 *Seff. C.* 76. 2 *Salk.* 474.

Of Surry] Where two counties are mentioned before, the county aforesaid is bad for the uncertainty. *E. 8 G. 2. Chesham in Bucks v. Stepney in Middlesex.* The court was moved to quash an order for removing one J. his wife and children, from *Chesham* to *Stepney*. It was objected that the justices stile themselves in the order, *justices for the county aforesaid*, which, as was urged, was quite uncertain, for both *Middlesex* and *Bucks* had been mentioned in the preceding part of the order, so that it does not appear whether they are justices of *Bucks*, which they ought to be, but is quite uncertain. 2dly. That the judgment of the order is not direct, but only by way of recital, *whereas complaint has been made to us, justices of the peace for the county aforesaid, and we do adjudge, &c.* Lord Hardwicke: As to the second objection, though the stile of the order is a little incorrect, yet we should not be too strict in such cases, and the word *adjudge* being here, it is sufficient. But as to the first objection, I think it is entirely uncertain to which county the word *aforesaid* refers; if to the county last before mentioned, that is, *Middlesex*, and they have no jurisdiction, for the power is only given to the justices for the

Place whence the person is removed; and this court can intend nothing in this case, but must take the order as it appears; and, it not appearing to be by the justices for *Bucks*, it is a bad order. Therefore the rule was made absolute to quash the order. *Cases temp. Lord Hardw. 100. Burr. Settl. Cas. 23.*

One of us of the quorum] Many orders were formerly quashed, for not setting forth, that one of the justices was of the *quorum*; but the 26 G. 2. c. 27, enacts, That no order shall be set aside for *that defect only*.

And by the 7 G. 3. c. 21, it is enacted, That if in any city, borough, town-corporate, franchise, or liberty, they have one (and no more than one) justice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeships, or other instruments, done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the said justices shall be of the *quorum*.

That Charles Harrison] In the case of *Southwell and Needwell. M. 11 Ann.* Whereas a certain woman hath intruded, These are therefore to require you to convey: objection; It is not said who this woman was. And by *Parker Ch. J.* You must either name her, or say a certain woman unknown. *Cas. of S. 57.*

T. 10 Ann. Case of Newington. Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him *with three children*. Quashed as to the children, having removed more than is complained of. *Cas. of S. 45.*

Order must not
be too general.

Ann his wife, and William their son] *M. 10 W. K. v. angford in Suffolk.* An order was made to remove three men and *their families*. It was held to be too general, as some of their families might not be removeable. The order therefore was quashed. *2 Salk. 412.*

So in the case of *Beaton and Sisten, M. 5 G.* Order for removal of *Thomas Block* and his family. Quashed as to the family, because too general. *Str. 114.*

T. 9 W. Flixton and Royston. Order to remove *Jane Smith* and her five children. Quashed as to the children for the uncertainty; not mentioning the names or ages of the children. *1 Sess. Cas. 11. Foley, 278.*

William their son aged nine years, and Elizabeth their daughter

daughter aged five years.] *M. 9 Ann. 2. v. Middleham.* Order to remove a child, of the age of ten years, to *Middleham*, because *Middleham* was the place where his father was last legally settled. Quashed by the court: for that there was no adjudication that *Middleham* was the place of the child's last legal settlement, and at that age it might have gained a settlement. *Foley, 271.*

T. 10 Ann. Ringmore and Petworth. The order was, Whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at *Ringmore*. It was moved to quash the same, because the children's ages were not set forth, and they may have gained a subsequent settlement. But by the court: It is not necessary in this case; for the order says, they were last legally settled in *Ringmore*, and then no matter what their ages are. *Cas. of S. 41.*

H. 15 G. 2. Bowling v. Bradford. The order removed the father and children (without setting forth their ages) from *Bradford* to *Bowling*, and adjudged *Bowling* to be the place of the father's last legal settlement. By the court: The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out (to shew that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. *Burr. Settl. Cas. 177.*

Likely to become chargeable] *Scrivenham and St. Nicholas.* An order was quashed for not saying that the party was likely to become chargeable. *3 Salk. 255.*

H. 4 G. Teelby and Willerton. Order, Whereas complaint hath been made, that *Anne Stamp* may become chargeable. We adjudge the same to be true. Quashed; for that the act enables the justices only to remove persons likely to become chargeable, and not persons that possibly may be chargeable; for no one can say who may not be chargeable; for a man of the greatest estate may possibly one time or other become chargeable, though it is not likely; and such a person is not removeable. There is as much difference in this case between *may* and *likely*, as between a possibility and a probability. *1 Sess. O. 117. Str. 77.*

Complaint must be made, that the party is *likely to become chargeable*, before the justices can remove. And, in the case of *K. and Wykes*, *T. 11 G. 2.* an information was granted against a justice, for taking the examination of

a person in order for his removal, upon the officer's complaining, that he endeavoured to gain a settlement in the parish contrary to law; without complaining at the same time, that he was *likely to become chargeable*. Andr. 238.

By the 3 G. 3. c. 8. Such officers, mariners, soldiers, and marines, who have served since Nov. 29, 1748, and not deserted [and by 24 G. 3. sess. 2. c. 6, the same is extended to those who have served since 1st April 1763. And also to ballotted militiamen who have personally served from the said 1st day of April 1763, for three years, and have been honourably discharged], and also their wives and children, may set up such trades in any city, town corporate, or other place, without any molestation by reason of the using of such trade; nor shall they, or their wives or children, during the time they shall exercise such trades, be removable to their place of settlement, till they shall become actually chargeable. Two justices, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them an attested copy of their affidavit, which shall be admitted as evidence in any general or quarter-sessions.

So that such persons now, like certificate persons, shall not be removed till they shall actually become chargeable. Their having served has therefore the effect, in that respect, of a certificate; and in many cases is preferable to a certificate, since thereby they are in a better capacity of obtaining settlements for themselves, their children, servants, and apprentices. And therefore the adjudication, as to such persons, must be that they are *chargeable*, and not that they are *likely to become chargeable*; for till they are chargeable, they cannot be removed.

And by the 7 G. 3. c. 40, The gate-keeper at any turnpike-gate shall not be removeable from the toll-house, till he shall be actually chargeable. s. 46.

To the said parish of Lambeth] In the case of *Q. v. Bradford, T. 10 Ann.* The order said, *Likely to become chargeable*, but did not say to what parish; it was therefore quashed. *Cas. of S. 40.*

And yet in the case of *Barholm and Witham super montem*; *H 5 G.* By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying to the parish from whence removed; for it is not to give a jurisdiction, but only the reason of the judgment. *Str. 142.*

And *M. 7 G. Maidstone and Dething.* It was held good in an order of removal, to shew a complaint that the party

is come into the parish of *Dething*, and is likely to become chargeable, without saying *to the said parish of Dething*.

Str. 393.

But the more modern adjudications have been different from the two last cited cases: As in the case of *Bourne and Spalding*, *E.* 8 G. 2. The complaint was, that the pauper was likely to become chargeable to the parish of *Spalding*; and the adjudication was, that the pauper was likely to become chargeable, generally, without saying *to the said parish of Spalding*. And by lord *Hardwicke* Ch. J. There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his *relations or parents*, as well as to the *parish*. And he said, that the case of *Barholm and Witham* was not finally determined by the court, but was referred to the judge of assize. And added, that there was no case that he could meet with, upon the strictest enquiry, where an adjudication at large, without some words of reference to the complaint, was holden to be good. *Burr. Settl. Cas.* 39.

M. 13 G. 2. *Ufculm and Clysthydon*, *M.* 13 G. 2. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "And whereas upon due examination and enquiry it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By *Lee* Ch. J. and the court: The objection is fatal. A complaint must appear of the paupers being likely to become chargeable to the parish from whence removed; and there must be an adjudication of the truth of it. For the justices have no authority without such complaint and adjudication. We cannot support an order by implication. There is no necessity indeed for any particular form of words. But there must be an adjudication of it in some words or other. *Bur. Settl. Cas.* 138.

Also in *M.* 13 G. 2. between the inhabitants of *Nether-ton* and *Hoblench*, an order was given up as indefensible, on the like objection. *Burr. Settl. Cas.* 139.

Examination.] *T.* 12 *W. Ware v. Stanstead-Mount-Fitchet*. An order was made by two justices, to remove one *H.* with his wife and children, from *Ware* in the county of *Essex*, to *Stanstead* in the same county. The following exceptions were taken to this order: 1st, Because it was said

said, with his wife and children. 2dly, Because it was said, *It appears upon examination before us, or one of us, &c.* and the examination ought to be before *both*, because both are to make the judgment of removal. To the first point, *Holt* chief-justice said, Suppose *H.* had put his son out to service at sixteen years old at *B.* and accordingly he had served there a year, and after the father comes to live at *B.* himself, and the son to live with him; such an order would remove the son, though he be not removeable. To the second, *Gould*, justice, said, The statute directed, and the practice was, to make complaint to *one justice*, and he grants his warrant to bring the poor man before *two justices*, and then they two examine and remove. 2 *Salk.* 448.

T. 11 & 12 G. 2. K. and Wykes. A person should have notice, and be heard before he be removed: for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer: natural justice requires that he be not condemned unheard. *Andr.* 238.

Of the said Charles Harrison upon oath] *H. 10 G. Munger-hunger and Warden.* Exception was taken to an order, because it was said to be made upon *due examination*, without saying *upon oath*. But by the court: This is sufficient; for where it is said to be made upon *due examination*, it shall be understood to be upon oath. 2 *Sess.* C. 40.

In the aforesaid case of *K. and Wykes*, one justice took the examination, and other *two* justices removed upon that sole examination, and in the order set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. *Andr.* 238.

In the case of *Coln St. Aldwin's and Highworth*, *M. 13 G. 2.* Lord chief-justice *Lee* said, he had often heard it declared, that both justices ought to be present at the *viva voce* examination of the witnesses. And Mr. justice *Page* said, he remembered a case, wherein it was determined that both justices *must be present*; and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself. *Burr. Sett. Cas.* 136.

Adjudge the same to be true.] *T. 13 W. Suddecomb and Burwash.* Order quashed, because it was only said to be com-

complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. 2 Salk. 491.

In the case of *K. and Westwood, H. 4 G.* Order quashed, because the justices only say, *We order him to be removed to such a place, as the place of his last legal settlement, without adjudging that to be the place.* Sir. 73.

And in the case of *Waltham Magna and Parva.* Whereas such a person is likely to become chargeable, as we are credibly informed, these are therefore to require you to remove: Quashed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another. *Cas. of S. 38.*

E. 11 G. 3. K. v. Honiton. It was held in this case, that an order of removal, adjudging "that the paupers have become chargeable," imports that they were so at the time of making such order. 3 Burr. Settl. Cas. 680.

Do likewise adjudge, that the lawful settlement] *T. 12 An. Eglium and Hartley-Wintly.* An order adjudges that a man was settled at such a place; and therefore they remove his widow thither. Quashed; because here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband. 1 Sess. C. 45.

T. 3 & 4 G. 2. K. and Warnhill. Adjudication that the last legal place of the pauper is at *Warnhill* in the county of *Berks.* Quashed; as being no adjudication of the settlement. 2 Sess. C. 92.

M. 3 Ann. It was held, that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged. 2 Salk. 473.

To receive and provide for them] The act directs that the place whither they are sent shall receive and provide for them; but it seems that, when the removal is into another county, these words are unnecessary, because useless; for the justices in one county, cannot take order for the relief of poor persons in another county.

The justices, who made the order, have a right to see it executed; and therefore they may enquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be as follows;

[" Surry]

" Surry.] Be it remembered, that on the fourteenth day
 " of June, in the thirty-first year of the reign of our lord
 " George the Third of Great-Britain, France, and Ireland,
 " king, defender of the faith, and so forth, at *Richmond* in the
 " county aforesaid, *Charles Stuart* overseer of the poor of
 " the township of *Richmond* aforesaid, in the county afore-
 " said, cometh before us, *Edward Barry*, and *Thomas Sedg-*
 " *wick*, esquires, two of the justices of our said lord the
 " king, assigned to keep the peace of our said lord the king
 " within the said county, and also to hear and determine
 " divers felonies, trespasses, and other misdemeanors in the
 " said county committed, and of the *quorum*, And com-
 " plaineth to us the said justices, and giveth us to under-
 " stand and be informed, that *Edward Wilson*, son of *Jane*
 " *Wilson*, aged ten years, hath come to inhabit and doth in-
 " habit in the said township of *Richmond*, in the county afore-
 " said, and is likely to become chargeable to the said township,
 " and that the said *Edward Wilson* hath not gained any legal
 " settlement within the said township, nor hath produced any
 " certificate owning him the said *Edward Wilson* to be set-
 " tled elsewhere; and thereupon he the said *Charles Stuart*
 " prayeth our warrant to remove and convey the said *Ed-*
 " *ward Wilson* to the parish or place where he the said *Ed-*
 " *ward Wilson* was last legally settled.

" And on the said fourteenth day of June, in the year
 " aforesaid, at *Richmond* aforesaid, in the county aforesaid,
 " *Catharine Wilson*, grandmother of the said *Edward Wil-*
 " *son*, cometh before us the justices aforesaid, and upon her
 " oath on the holy gospel to her then and there by us the
 " justices aforesaid administered, deposeth and sweareth, that
 " she the said *Catharine Wilson* had a daughter whose name
 " was *Jane Wilson*, which *Jane Wilson* was never married,
 " and is now dead, and that she the said *Jane Wilson* did
 " bear the said *Edward* her son, at the parish of *Ewel* in
 " the county aforesaid, and that the said *Edward* hath been
 " carried or gone about the country ever since in a state of
 " vagrancy, that is to say, wandering and begging, and doth
 " now inhabit in the said township of *Richmond* with *George*
 " *Wilson*, grandfather of him the said *Edward*.

" Whereupon, and on due consideration had of the pre-
 " mises, we the justices aforesaid, on the said fourteenth day
 " of June, in the year aforesaid, at *Richmond* aforesaid, in
 " the county aforesaid, do make our warrant under our
 " hands and seals in the form and words following; that is
 " to say, [*Here set forth the warrant of removal.*]

" And

" And afterwards, on the sixteenth day of *June*, in the
 " year aforesaid, at *Richmond* aforesaid, in the county aforesaid,
 " said, the said *Charles Stuart*, overseer of the poor aforesaid,
 " cometh before us the justices aforesaid, and upon his oath
 " on the holy gospel, to him by us the said justices adminis-
 " tered, deposeth and sweareth, that on the fifteenth day of
 " *June*, in the year aforesaid, he the said *Charles Stuart* did
 " remove and convey the said *Edward Wilson* from and out
 " of the said township of *Richmond* to the said parish of
 " *Ewel*, and him the said *Edward Wilson*, together with a
 " true copy of our warrant aforesaid, did deliver to *A. B.*
 " overseer of the parish of *Ewel* aforesaid, at the parish of
 " *Ewel* aforesaid, in the county aforesaid. In witness
 " whereof, we the said justices, at *Richmond* aforesaid, in
 " the county aforesaid, the sixteenth day of *June*, in the
 " year aforesaid, to this present record do set our hands and
 " seals."

To this may be annexed the order of removal, confirmed
 at the sessions on appeal, or not appealed against. And it
 may be proper to have duplicates ; one filed at the sessions,
 and the other kept by the township. 3 *Burn*, 579.

M. 28 G. 2. K. and Davis. Indictment for refusing to
 receive a pauper, sent by order of two justices to the liberty
 of the *Tower*. Plea, not guilty. Verdict against the de-
 fendant. It was moved in arrest of judgment, that the 3
W. c. 11. having directed another method of punishment, to
 wit, a fine to be levied by warrant of distress in a summary
 way, that should be strictly pursued. *Denison J.* If a statute
 create a new offence, and give a punishment, that rule must
 be followed ; but if the offence was before at common law,
 and a new punishment only given, it is indictable also. So
 if one statute give one punishment, and another statute give
 another punishment, the prosecutor has his election. This
 was an offence before the 3 *W.* Such a parish officer might
 have been indicted on the 13 & 14 *C. 2. c. 12*, or what would
 have become of a pauper in case of disobedience between the
 passing those acts? But the 3 *W. c. 11*, does not relate to re-
 movals from parish to parish, but from county to county ; and
 therefore there is no remedy but by indictment. *Foster J.*
 In all cases where a justice has power given him to make an
 order, and direct it to an inferior ministerial officer, and he
 disobeys it, if there be no particular remedy prescribed, it
 is indictable. And judgment was given against the defen-
 dant.

Churchwardens
 or overseers re-
 fusing to receive
 a pauper may
 be proceeded
 against by sta-
 tute or at com-
 mon law.

And the statute of the 13 & 14 *C. 2. c. 12*, enacts,
 That

That such officer refusing shall be bound over to the assizes or sessions there to be indicted.

Persons voluntarily returning, after being removed, without a certificate, shall be sent to the house of correction; as directed in the 13 & 14 C. 2. c. 12. s. 3, and by the vagrant act of the 17 G. 2. c. 5. s. 1. To which the reader is referred at the beginning of this subdivision.

Baldwin and his Wife v. Blackmore, E. 31 G. 2. *Baldwin* and his wife were removed, by order of two justices, from *Marsden* to *Banknewton*. Which order was not appealed against. Afterwards, they both returned to *Marsden* without bringing a certificate. Of which, complaint being made in writing, and upon oath, to the defendant Mr. *Blackmore*, who was a justice of peace for the county of *Lancaster*, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, till they should be discharged from thence by due course of law. On the trial of this cause, there was a verdict for the plaintiff, and 1s. damages, subject to the opinion of the court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? Lord *Mansfield* delivered the resolution of the court: He observed, that it was manifest the justice had not acted intentionally wrong: and it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing this gentleman from suffering for what he had honestly and without any bad intention done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case: and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded; though it does not appear upon which of the two the justice proceeded. These two statutes are, the 13 & 14 C. 2. c. 12. (a law made before the certificates under the late acts existed); and the 17 G. 2. c. 5. (which relates to persons returning without bringing such a certificate). Now the warrant is not within the former of these acts, nor is the case itself within it: the

the commitment is, *till discharged by due course of law*; whereas upon this act it should have been, to the house of correction, *there to be punished as a vagabond*, or to a public workhouse, *there to be employed in work and labour*. Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month*: whereas this warrant is quite general: it is an indefinite commitment; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal; and consequently, the plaintiff is entitled to the damages that he has recovered. *Burr. Mansf. 595.*

2. Order of Removal of Certificate Persons.

The 8 & 9 W. c. 30, enacts, That if any person who shall come into any parish or place, there to reside, shall deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in such certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: and then, and not before, it shall be lawful for any such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought. *f. 1.*

Certificate shall oblige the parish granting it, to receive the pauper when he shall become chargeable.

And it is enacted by the 3 G. 2. c. 29. *f. 9.* That when any overseer or other person shall remove back any persons or their families, residing under a certificate, and becoming chargeable, to the parish or place to which they shall belong; such overseer or other person shall be reimbursed the reasonable charges they may have been put unto in maintaining and removing such persons, by the churchwardens or overseers of the parish or place to which they are removed; such charges being first ascertained and allowed of by one or more justices for the county or place to which such removal shall be made: and the said charges, so ascertained and allowed, shall, in case of a refusal of payment, be levied by distress and sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such justice or justices.

And the overseer taking such paupers back, shall be paid reasonable charges.

An

An Order of Removal of a Certificate Person.

Order of removal of a certificate person.

Surry.] *To the churchwardens and overseers of the poor of the parish of Dorking, in the said county of Surry, and to the churchwardens and overseers of the poor of the parish of Horsham, in the county of Sussex.*

Form of an order of removal.

"Whereas complaint hath been made by the churchwardens and overseers of the poor of the parish of *Dorking* aforesaid, in the said county of *Surry*, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of *Surry*, and one of us of the *quorum*, that *James Butler*, *Mary* his wife, *Stephen* their son aged nine years, and *Eleanor* their daughter aged three years, having for some time last past dwelt in the parish of *Dorking* aforesaid, being allowed so to do by reason of a certificate, bearing date the day of in the year of our Lord under the hands and seals of *A. B.* and *C. D.* churchwardens, and *E. F.* and *G. H.* overseers of the poor of the said parish of *Horsham*, attested by *A. C.* and *B. W.* two credible witnesses, and allowed by *E. B.* and *J. C.* esquires, two of his majesty's justices of the peace for the said county of *Sussex*, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of *Dorking*; and whereas it appears to us, as well upon the oath of the said *James Butler* as otherwise, that neither they the said *James Butler*, *Mary* his wife, *Stephen* and *Eleanor* their children, nor any of them, have gained any legal settlement since the date of the said certificate: whereby, and upon due consideration had of the premises, it appears to us, and we do hereby adjudge, that the said *James Butler*, *Mary* his wife, *Stephen* and *Eleanor* their children, are become chargeable to the said parish of *Dorking*, and that the place of the last legal settlement of them and every of them is in the said parish of *Horsham* in the said county of *Sussex*: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of *Dorking*, or some or one of you, to convey the said *James Butler*, *Mary* his wife, and *Stephen* and *Eleanor* their children, from and out of your said parish of *Dorking*, to the said parish of *Horsham*, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true cop

"copy thereof, at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of *Horsham*, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the day of in the year of our Lord ."

Allowed by E. B. and J. C. esquires, two of his majesty's justices of the peace.] In the case of *Barleycroft and Cole-Overton, M. 7 G.* Order of removal of a certificate person. It was not said that the certificate was *attested*, but only that it was *allowed*. But by the court: The attestation, by the statute, is made previous to the allowance; and therefore, when they say it was *allowed* according to the act of parliament, we must intend it was *attested*, for otherwise it could not be so *allowed*. And the order was confirmed. *Str. 402.*

Are become chargeable.] In the case of *Q. v. Brumstead, E. 9 Ann.* It was adjudged, that the justices cannot remove a person who comes into a parish by certificate, till he is actually chargeable to the parish. *2 Salk. 530.* Certificate man not removeable till actually chargeable.

And a similar adjudication took place in the case of *Teelby v. Willerton, H. 4 G. Str. 77.*

Do hereby adjudge.] In the case of *Maldon and Fleetwick, T. 2 Ann.* An order was made, reciting that, Whereas complaint hath been made unto us, that such a person, lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove; and quashed, because there was no adjudication. *2 Salk. 530.* And he must be adjudged chargeable.

T. K. v. Great Bedwin, 15 G. 2. An order of two justices was made without saying it was on complaint of the churchwardens and overseers, or that there was any adjudication that the certificate person was actually become chargeable. On appeal to the sessions, they set all this right under *5 G. 2. c. 19*, which impowers them to amend defects in form, and proceed to the merits. By the court: This is going too far; they are to amend defects in form before they go into the merits, whereas here they must go into the merits before they can introduce the amendment. It was never designed they should insert new facts, but only amend the informal way of setting out the facts which were stated. The order therefore for the amendment must be quashed, and also the original order. *Str. 1158.*

It does not, however, seem to be necessary, in the order of removal, to take any notice of the certificate, or to make

any farther use of it than as evidence to the justices of the settlement. And if it is not absolutely necessary to recite it, it had better be omitted; for misrecital in any material part will be fatal, because there will then be no such certificate as is there recited, and the order must fall of course. The form will be plainer and more simple, if drawn a little varied from the common form of an order of removal of other persons having no certificate. Where indeed the persons are only *likely to be chargeable*, it is necessary to set forth in the order that they have no certificate; for, if they have one, they cannot be removed till they are actually chargeable. But if the order sets forth that they are chargeable, it is not material whether they have a certificate or not; for in both cases they are then equally removeable; the following form will therefore be proper both for a certificate person, and for one having no certificate, who is actually become chargeable:

" *Surry.*] To the churchwardens and overseers of the
 " poor of the parish of *Dorking* in the said county of *Surry*,
 " and to the churchwardens and overseers of the poor of the
 " parish of *Horsham* in the county of *Sussex*, and to each
 " and every of them,.

" Upon the complaint of the churchwardens and over-
 " seers of the poor of the parish of *Dorking* aforesaid, in the
 " said county of *Surry*, unto us whose names are hereunto
 " set and seals affixed, being two of his majesty's justices of
 " the peace in and for the said county of *Surry*, and one of
 " us of the *quorum*, that *James Butler*, *Mary* his wife, *Ste-*
 " *phen* their son aged nine years, and *Eleanor* their daughter
 " aged four years, have come to inhabit in the said parish of
 " *Dorking*, not having gained a legal settlement there, and
 " that the said *James Butler*, *Mary* his wife, and *Stephen*
 " and *Eleanor* their children, are now chargeable to the
 " said parish of *Dorking*: we the said justices, upon due
 " proof made thereof, as well upon the examination of the
 " said *James Butler* upon oath, as otherwise, and likewise
 " upon due consideration had of the premises, do adjudge
 " the same to be true; and we do likewise adjudge, that the
 " lawful settlement of them the said *James Butler*, *Mary* his
 " wife, and *Stephen* and *Eleanor* their children, is in the said
 " parish of *Horsham* in the said county of *Sussex*: we there-
 " fore require you the said churchwardens and overseers of
 " the poor of the said parish of *Dorking*, or some or one of
 " you, to convey the said *James Butler*, *Mary* his wife, and
 " *Stephen* and *Eleanor* their children, from and out of your
 " said

"said parish of *Dorking*, to the said parish of *Horsham*, and
 "them to deliver to the churchwardens and overseers of
 "the poor there, or to some or one of them, together with
 "this our order, or a true copy thereof, at the same time
 "shewing to them the original; and we do also hereby re-
 "quire you the said churchwardens and overseers of the
 "poor of the said parish of *Horsham*, to receive and provide
 "for them as inhabitants of your parish. Given under our
 "hands and seals the day of in the year
 "of the reign of his majesty king *George the Third*."

3. *Appeal against an Order of Removal.*

By the 13 & 14 C. 2. c. 12, it is enacted, That persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter-sessions, who shall do them justice according to the merits of their cause. *f. 2.*

And the 8 & 9 W. c. 30, enacts, That the appeal against the order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter-sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere. *f. 6.*

At the next general or quarter-sessions.] In the case of *K. v. Norton*, E. 2 G. 2. Exception was taken to an order of sessions, for discharging an order of removal, because the justices' order was dated June 21, and the sessions order was not till Michaelmas sessions following, so that *Midsummer* sessions intervened. To this it was answered, That by the express words of the statute, the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal: and for aught appears, *Michaelmas* sessions might be the next sessions after the grievance. And so it was held in the case of *Milbrook* and *St. John's* in *Southampton*, M. 1 G. To which the court agreed, and the sessions order was affirmed. *Str. 831.*

T. 11 W. *K. v. Langley*. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and therefore the determination upon the appeal was not at the next quarter-sessions. But by the court: The appeal must be lodged at the next quarter-sessions, but, when it is lodged, the justices may adjourn it. 2 *Salk. 605. Comb. 365.*

E. 19 G. 3. *K. v. The Justices of the East-Riding of York-*

Yorkshire. It was moved for a *mandamus* to receive an appeal against an order of removal, on the following facts: The order of removal had been made by the two justices on the 22d of *September*, but the pauper was not removed till the 5th of *October*. *Hull*, to which the pauper had been removed from *Whitby*, is sixty miles distant from *Northallerton*, where the sessions began on the 6th of *October*. At which sessions no appeal was entered. And at the *Epiphany* sessions following, which began on the 12th of *January*, *Hull* offered an appeal, but the justices refused to hear it, thinking themselves bound by the words of the statute, which directs the appeal to be to the *next* sessions. On shewing cause, it was insisted, that the succeeding sessions had no jurisdiction; that an appeal might have been entered at the *Michaelmas* sessions, on the second or third day, for that no notice is necessary in order to entitle the parties to enter their appeal, though if there has been no notice, or not reasonable notice, the justices are bound to adjourn the hearing till the ensuing sessions. The court said, That by *next* sessions, the statute meant the next *possible* sessions, and that here it was impossible for the appellants to lodge their appeal at the *Michaelmas* sessions. And the rule was made absolute for a *mandamus*. Douglas, 183.

When the sessions itself is adjourned, the style of the sessions should not run at such a sessions held by adjournment, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further sessions by adjournment: as in the case of *Q. v. The Inhabitants of Hinderclieve*. An order made at the general quarter-sessions of the peace held by adjournment was quashed, because it did not appear that this was the next general quarter-sessions, for it might be that the sessions was begun, and continued by adjournment before the order was made. 19 *Viner*, 356.

In the case of *Heptonstall and Errendon*, T. 12 G. 2. The sessions was said to be holden on such a day by adjournment, but it did not appear when the original sessions was holden. The order was therefore quashed. *Burr. Sett. Cas.* 88.

Quarter-sessions
adjourned.

T. 22 & 23 G. 2. *West-Torrington and North-Thoresby*. By the court: A quarter-sessions must be holden four times in a year, as directed by statute; and it may be adjourned from time to time, and from place to place: but if it is once dropped, it cannot be resumed. *Burr. Sett. Cas.* 293.

For

For the county, division, or riding, from whence the removal was.] T. 8 G. 3. *East-Donyland* and *St. Giles's, Colchester*. Two justices for the borough of *Colchester* removed the pauper from *St. Giles's* in *Colchester* to *East-Donyland*, in *Essex*; and, on appeal to the quarter-sessions of the borough, the justices there confirm the order, and state a case specially upon the facts for the opinion of the court of King's Bench. Upon arguing the matter there, it was observed, that the appeal ought to have been to the county-sessions. To which it was answered, that the parties having acquiesced in the jurisdiction, and entered upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. But by the court: The borough-sessions had no jurisdiction to make this order of confirmation; and therefore their opinion and their order are both nugatory. The appeal ought to have been to the quarter-sessions of the county. And no such appeal having ever been made, the original order stands good as unappealed from. And the original order was accordingly confirmed. *Burr. Sett Cas.* 592.

The appeal must be to the quarter-sessions of the county, division, or riding.

The 9 G. c. 7. s. 8, enacts, That no appeal from any order of removal shall be proceeded on, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, to the churchwardens or overseers of the parish or place from which the removal shall be: the reasonableness of such notice to be determined by the justices at the quarter-sessions to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, they shall adjourn the appeal to the next quarter-sessions, and then and there finally determine it.

Reasonable notice of appeal to be given.

But though the act does not say that such reasonable notice shall be in writing, they will be the better enabled to judge of the reasonableness of it, if it should be in writing; and the following form might be adopted:

" To the churchwardens and overseers of the poor of the parish of _____ in the county of _____ Form of notice.
 " This is to give notice to you and every of you, that we the churchwardens and overseers of the poor of the parish of _____ in the county of _____ do intend, at the next quarter-sessions of the peace to be holden for the said county of _____ to commence and prosecute an appeal against an order of E. B. and J. C. esquires, two of his majesty's justices of the peace of the said county of _____
 G g 3

" of for and concerning the removal o to our
 " said parish of Witness our hands this day
 " of

A. C. } Churchwardens.
 B. C. }
 C. C. } Overseers of the poor."
 D. C. }

Order not ap-
 pealed against
 is final and con-
 clusive.

In the case of *Malendine* and *Hunston*, H. 12 Ann. Two justices, by an order, send some persons to *Hunston*. Two justices there, by an order, send them back again. By the court: They ought to have appealed, and not have sent them back; and held the order of the first two justices to be good, because there was no appeal against it. *Foley*, 273.

And in the case of *Nymphsfield* and *Woodchester*, M. 16 G. 2. it was held by the court, That nothing is more established, than that an order unappealed from is conclusive. *Str.* 1172. *Burr. Sett. Cas.* 191.

Also it was held by *Buller*, justice, in the case of *K. v. Kenilworth*, T. 28 G. 3. That there is no proposition in the law of settlements more clear than this; that an order of removal unappealed against is conclusive against all the world; and this is so clearly and universally established, that it ought never to be impeached. 2 *Durnf. & East*, 598.

But is conclusive
 only to those
 mentioned and
 removed.

But an order not appealed against is only conclusive as to those who are mentioned in it and removed; as in the following case:

T. 26 G. 3. *Southawram v. Northawram*. *Elizabeth Booth* widow, and her three children, were removed from *Southawram* to *Northawram*. On the appeal, the sessions stated, that it appeared by the evidence of *William Booth* (father of *Jeremiah* late husband of the pauper) that the said *William* and *Jeremiah* were born and settled at *Halifax*, but it did not appear that *Jeremiah* had done any act to gain a settlement: that in April 6, 1774, the said *William Booth* and his wife, but not any of their children, were removed from *Halifax* to *Northawram*, who received the two paupers, and did not appeal. That *Jeremiah* and *Elizabeth* the pauper were married some years before the removal of *William* and his wife, and had those three children: and *Jeremiah*, from his marriage to his death, lived at *Halifax*, in a house he rented, independent of his father, and was not removed by or mentioned in the order, nor was then any part of his family. The session thereupon discharged the order, subject to the opinion of this court, Whether the settlement of

of *Elizabeth Booth*, and the said three children, was by inference to be deemed at *Halifax*, or to follow the settlement of the father to *Northawram*? By the court: The order of removal, unappealed from, is conclusive as to the *father* and *mother*, but not as to the *son*, because he is not mentioned in it. And the sessions have expressly found, that the son was settled at *Halifax*. Original order quashed, and order of sessions confirmed. 1 *Durnf. & East*, 353.

M. 30 G. 3. K. v. the justices of Herefordshire. A rule had been obtained on the defendants to shew cause why a *mandamus* should not issue, commanding them to receive an appeal against an order of removal. The order was made on *Friday* the 18th of *April*; on the 19th the pauper was removed; and on the *Tuesday* following, the 22d, the *Easter* sessions were held at *Hereford*, twenty miles distant from the parish to which the party was removed; at which sessions it is the practice not to receive any appeal after the *Tuesday* morning. The parish not having appealed at those *Easter* sessions, the justices at the *Midsummer* sessions refused to receive the appeal, because not made at the next quarter-sessions, according to the 13 & 14 *Car. 2 c. 12. s. 2*. The foundation of this application was, that as the officers of the parish, to which the pauper was removed, had not sufficient time to convene a meeting of the inhabitants, in order to take their opinion upon the subject whether there were any grounds for the appeal, the *Midsummer* sessions were the next possible sessions. *Caldecott* now shewed cause against the rule. *Bower*, in support of it. Lord *Kenyon*, Ch. J. The words of the act of parliament are very strong; and they require the appeal to be made at the sessions next after the grievance. Where indeed an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered by granting a *mandamus* to compel the justices at the following sessions to receive the appeal; because the words "next sessions" mean "the next possible sessions." But this is a very different case; for there were two intervening days after the execution of the order, and before the *Easter* sessions; and if there was not sufficient time before those sessions to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to the stat. 9 *G. c. 7. s. 8*. The three other judges concurring, rule discharged. 3. *Durnf. and East*, 504.

The aforesaid statute of the 13 & 14 *C. 2.* expressly says, Sessions to proceed upon the merits that

that the justices upon the appeal, shall do to the parties justice, according to the merits of their cause.

Defects of form
to be rectified.

And the 5 G. 2. c. 19, enacts, That on all appeals to the sessions against the judgments or orders of any justices, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shall proceed to hear the truth and merits of the cause. *f. 2.*

The justices
may alter their
order during the
sessions.

M. 3 Ann. St. Andrews Holborn v. St. Clement's Danes. The court of quarter sessions of *Middlesex* made an order, and afterwards the same sessions vacated it by a subsequent order, and a *certiorari* being brought, both orders were returned thereon. *Holt, Ch. J.* You should not have returned the *vacated order*, but only the latter. This is as if we, disliking our judgment, should the same term make an entry of two different judgments, and return both on a writ of error, which ought not to be: the sessions is all one day, and the justices may alter their judgments at any time, while it continues. *2 Salk. 494.*

Costs on the
appeal.

And by the 8 & 9 W. c. 30. *f. 3.* for the more effectual preventing of vexatious removals and frivolous appeals, the justices in sessions, upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such appeal), shall at the same sessions order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom such appeal shall be determined, or by the person who gave such notice; and if the person ordered to pay such costs, shall live out of the jurisdiction of the said court, any justice where he shall inhabit, shall, on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no sufficient distress can be had, shall commit him to the common gaol, there to remain for the space of twenty days.

E. 16 G. 2. Stanfield and Spotland. The sessions adjourned the appeal to the next quarter-sessions, and ordered four guineas costs to the appellants: which order was quashed

quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal; without hearing it. *Burr. Settl. Cas.* 205.

For preventing vexatious removals, if the justices shall at their quarter sessions, on an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such person was unduly removed, they shall, at the same quarter-sessions, order and award to such appellant, so much money as shall appear to such justices to have been reasonably paid by the parish or place on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal and the determination of such appeal; to be recovered in the same manner as costs and charges upon an appeal are by the 8 & 9 W. 3 G. c. 7. s. 9.

Maintenance to be reimbursed from the removal to the determination of the appeal.

E. 3 G. 2. St. Mary's Nottingham and Kirklington. Motion for a *mandamus* to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington the expence their officers had been put to, in keeping a poor person from the time of his removal till the order was discharged by the sessions upon appeal. And the *mandamus* was granted. 2 *Sess. C.* 67.

M. 16 G. 2. Great Chart and Kennington. The order of the two justices was quashed by the sessions for insufficiency; and the sessions thereupon order, that the costs of maintaining the pauper, since his removal, shall abide the event of the cause, in case the said parish of Great Chart shall think proper by another order to remove the pauper to the said parish of Kennington. Which order, as to the costs, was quashed by the court of King's Bench; because the sessions must either give or not give costs when they make their order. *Burr. Settl. Cas.* 194.

M. 13 W. Mynton and Stony Stratford. By Holt Ch. J. and the court: If on appeal to the sessions an order be discharged, that judgment binds only between the parties; but when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of the party's last legal settlement. 2 *Salk.* 527.

Order confirmed upon the appeal, is final.

In the case of *Little Bitham and Somerby*, *M. 6 G.* A pauper is sent by order of two justices to Somerby, as the place of his last legal settlement. Somerby appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, Somerby sends him to a third place. By the court: An order of reversal is final only between

An order of reversal is only final between the two parishes, an order confirmed is final as to all the world.

tween the two parishes; but, if it be confirmed, it is final as to all the world; and therefore, no new settlement appearing, the order of removal from *Somerby* must be quashed, *Str.* 232.

And in the case of *Cirencester* and *Coln St. Aldwins*, *H.* 8 G 2. lord *Hardwicke* Ch. J. said, He took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes: and this distinction is reasonable; because the third parish may be able to give better evidence than the other could. *Burr. Settl. Cas.* 17.

E. 19 G. 2. *The parish of Osgathorp v. the parish of Diseworth.* A person was removed by an order of two justices of the peace from *Diseworth* to *Osgathorp*, which order, on appeal, was discharged. He was by a second order sent from *Diseworth* to *Osgathorp*, as a certificate-man; and, upon an appeal, it was stated, that the first removal was before he became chargeable, and the second after he became so; and the sessions were of opinion, that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it has been determined that, a reversal is final between the parties. By the court: So it would be if the special matter did not appear; a certificated person cannot be sent back, until he is actually a charge; a removal before is premature. The consequence of which only is, that he must be suffered to remain till he does become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed, *Str.* 1256.

Order quashed
for form.

But an order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Foley*, 276.

Superintend-
ency of the
court of King's
Bench.

It was moved for setting aside an order of sessions confirming an order of two justices upon appeal; but the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. *1 Ventr.* 310.

M. 9 Ann. *South Cadbury* and *Braddon*. On appeal to the sessions, that court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. But by the court: The justices are not bound

bound to express the reason of their judgment; any more than other courts; but the reason of their judgment must be collected from the record.

The justices are not obliged to state the case specially, Sessions are not though in some instances they may be censurable for such obliged to state conduct; as in the following case: cases.

M. 9 G. 2. Oulton v. Wells. Two justices removed three children of *Francis Ailmer* from *Wells* to *Oulton*; and the sessions upon appeal confirm their order, generally, without stating any special case. The counsel for *Oulton* excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of which exceptions was, That the said children, after their father's death, went with their mother to an estate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions, together with the original order of two justices. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. But by lord *Hardwicke* Ch. J. To what purpose should we make a rule to shew cause why this order of sessions should not be quashed? For I do not see that we can ever make such a rule absolute; because this which is alledged to have been the real state of the case, does not appear to us to be the fact: and how can we take it for granted, that it was the real fact? It is certainly a thing much to be censured, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law. And Mr. justice *Page* said, he never knew an instance, that this court could force the justices, against their will, to state a special case. *Burr. Sett. Cas.* 64.

And in the case of *Preston upon the Hill v. Daresbury, E. 9 G. 2.* Two justices made an order for removal of the pauper from *Daresbury* to *Preston*; and, upon appeal to the sessions, they confirmed the order, generally; not caring to state any special case in their order. A motion was made to quash these orders, which came before the court upon a bill of exceptions, containing a special state of the case. On shewing cause, the single question was, Whether a bill of exceptions would lie in this case to the court of quarter-sessions? And after a full hearing of the arguments on both sides, the court were unanimously of opinion, that a bill of exceptions

exceptions does not lie to the quarters-cessions. *Burr. Settl. Cas. 77.*

H. 10 G. 3. K. v. the inhabitants of Merevall. Adjudged, That the delivery of an order of removal, and of the paupers, to a *churchwarden*, where there is no *overseer* for that part of the parish, is sufficient. 3 *Burr. Settl. Cas. 661.*

VI. How Overseers are to account.

Churchwardens
and overseers to
account.

The 43 *Eliz. c. 2.* enacts, That the churchwardens and overseers shall, within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 *Q.*) a true and perfect account of all sums by them received, and of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office: and such sums of money as shall be in their hands, shall pay and deliver over to their successors. *f. 2.*

And that it shall be lawful for the subsequent churchwardens and overseers, or any of them, by warrant from two such justices, to levy as well the said sums of money, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made, rendering to the parties the overplus: and in defect of such distress, any two justices may commit him to the common gaol, there to remain without bail or mainprize until payment of the said sum, arrearages, and stock. And also any two such justices may commit to the said prison every one of the said churchwardens and overseers which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much, as upon the said account shall be remaining in his hands. *f. 4.*

Further regulations respecting their accounting, by the
17 *G. 2.*

And by the 17 *G. 2. c. 38. f. 1, 2,* it is enacted, That churchwardens and overseers shall yearly, within fourteen days after overseers shall be appointed, deliver to the other succeeding overseers a just account in writing, fairly entered in a book kept for that purpose, and signed by them, of all sums of money by them received, or rated and not received, and of all materials in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers, and of all other things concerning their office; and that they shall also pay and deliver over all sums of money and other things which shall be then
in

in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall verify and attest the taking of it, at the foot of the account, without fee, and the said books shall be preserved by the churchwardens and overseers in some public or other place within the parish or township; and they shall permit any person assessed, or liable to be assessed, to inspect the same at all reasonable times, paying 6d. for such inspection; and shall upon demand give copies at the rate of 6d. for every three hundred words, and so in proportion. And if they shall refuse or neglect to make and yield up such account, verified as aforesaid, within such time, or shall refuse or neglect to pay over the money and other things in their hands, any two justices may commit them to the common gaol, till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid.

Churchwardens] In the case of *K. v. Pecke, M. 15 C. 2.* Churchwardens cannot be committed as churchwardens, but as overseers. The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concerned his office: but upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, though to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden. 1 *Keb.* 574.

M. 8 G. K. v. the justices of Somersetshire. Mandamus The statute requiring the balance to be paid to the successors, cannot be dispensed with by the vestry. to the justices, to grant a warrant for levying 30l. 17s. 11d. being the balance of the last overseers' account in their hands. They return, that there was such a balance, but that the vestry had ordered them to retain it; and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that a person named *Young* was so employed, and the balance exhausted in fees; and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the court: There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new officers, under a penalty; and it is not in the power of the vestry to dispense with the statute. *Str.* 992.

In the case of the *mayor and churchwardens of Northampton*, the mayor committed the churchwardens, as overseers of the poor, for refusing to account; and the warrant of commitment concluded thus: *Until they be duly discharged according to law.* The court held the commitment void, as the warrant ought to have concluded, *there to remain until they shall account*, as the statute appoints. Where a man is committed as a criminal, the commitment must be until dis-

discharged according to law; but where it is only for contumacy, until he comply and perform the thing required; for, in the latter case, he shall not lie till sessions, but shall be discharged upon the performance of his duty. *Carth.* 152.

Books to be delivered to the new overseer.

And in the case of *K. v. Clapham*, *T.* 24 & 25 *G.* 2. It was held that the books of the poor-rates are public books, and ought to be delivered over by one overseer to another, that every parishioner may have access to them; and the overseer and churchwarden for the time being ought to have the custody of them. *1 Wilf.* 305.

Overseer removing or dying.

By the 17 *G.* 2. *c.* 38. *f.* 3, If any overseer shall remove, he shall, before such removal, deliver to some churchwarden or other overseer, his accounts, verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall, within forty days after his decease, deliver all things concerning his office to some churchwarden or other overseer, and pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.

Persons aggrieved may appeal against the account

And by the 43 *Eliz.* *c.* 2, If any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general quarter-sessions, whose order therein shall bind all parties.

Upon this statute of the 43 *Eliz.* the appeal is not limited to the next sessions, but may be at any time after.

If any person shall have any material objection to such account, or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, they shall adjourn the appeal to the next sessions after; and the court may award costs to either party, as in cases of settlement by the 8 & 9 *W.* 17 *G.* 2. *c.* 38. *f.* 4.

Here is therefore a power to award costs, if the appeal is to the next sessions; but if the appeal is upon the 43 *Eliz.* and not to the next sessions, there is no power to award costs.

And by the 17 *G.* 2. *c.* 38, In all corporations and franchises, not having four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. *f.* 5.

M. 4 *Ann.* *Q.* v. *Hedges*. An order was made at the quarter-sessions upon appeal: the case was, *Hedges*, an overseer of the poor, accounted before two justices, and this account was allowed; the parish appealed to the quarter-sessions from this allowance, and they disallowed the account, and ordered him to pay so much over, which they adjudged

adjudged to be in his hands; and for not doing this they committed him. On a motion to quash this order, because by the statute 43 *Eliz. c. 2. s. 4.* they should have levied the arrears by distress and sale, and in default of distress have committed him: the whole court agreed, that the justices at the sessions upon the appeal must execute their judgment in the same manner as the two justices must do, and that the two justices must have sent their process to distrain, and on a return that there was no distress, should have committed him. 3 *Salk.* 533.

Allowance of the account.

Surry.] “Perused and allowed (having been first signed Allowance of
“and verified on oath by *A. B.* and *C. D.* churchwardens, account.
“and *A. Y.* and *A. C.* overseers of the poor) by me one
“of his majesty’s justices of the peace in and for the said
“county, the day of . *E. B.*”

VII. Penalty of Overseers for the neglecting their Duty.

By the 43 *Eliz. c. 2.* Overseers being negligent in their office, shall forfeit for every default 20s. to the poor, to be levied by one of the churchwardens or overseers, by warrant of two justices (1 *Q.*) by distress; or in default thereof, two justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the forfeiture shall be paid. *s. 2, 11.* Penalty on neglect of duty, by 43 *Eliz.*

And the 17 *G. 2. c. 38.* enacts, That any parish officer neglecting to obey any directions of that act, and being convicted thereof on oath before two justices, in two calendar months after the offence committed, shall forfeit any sum not exceeding 5*l.* nor less than 40s. to the poor, by distress. *s. 14.* Penalty by 17 *G. 2.*

And by the 3 *W. c. 11. s. 12.* In all actions to be brought in the courts of *Westminster*, or at the assizes, for the recovery of any sum mis-spent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.

VIII. Indemnification of Overseers in the Performance of their Duty.

The 7 *Jac. c. 5.* enacts, That if any action shall be brought against any justice or constable (and by 21 *Jac. c. 7.* against any churchwarden or overseer, or other person who Churchwardens or overseers may plead the general issue.

who in their aid or by their command shall do any thing concerning their offices), he may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs. And such action shall be laid in the county where the fact was committed, and not elsewhere.

How indemnified by 43 Eliz.

And the 43 *Eliz. c. 2.* enacts, That persons sued for any thing done on that act, may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit. *f. 19.*

And by 24 G. 2.

And by the 24 *G. 2. c. 44.* it is also enacted, That no action shall be brought against any constable, headborough, or other officer, or any person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice, till demand has been made, or left at the usual place of his abode by the party or his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected for six days after such demand; and if after compliance therewith any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and such constable, headborough, or other officer or person acting in his aid; then, on proof of such warrant, the jury shall find for the defendant. And if the verdict shall be given against the justice the plaintiff shall recover his costs against him, to be taxed in such manner, by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid.

In *Jackson's case*, *E. 13 G. 3.* It was held by lord *Mansfield*, and the court, That churchwardens and overseers are clearly within the act of 24 *G. 2.* and therefore not to be proceeded against, without demand and perusal of the warrant. The justices' warrant is the authority under which they act. To extend the benefit of 21 *Jac.* was the intent of the statute 24 *G. 2.* and all officers acting under a justice's warrant are included in it. *Lofft, 249.*

An Abridgment of the statute of the 22 G. 3. c. 83. for the maintenance of the poor by incorporated societies.

A GENERAL provision is made, that nothing in this act shall extend to any parish, township, or place which shall not agree to adopt the provisions herein contained. Restrictions.

From the time that any parish, township, or place, shall have adopted the provisions of this act, so much of the act of 9 G. 2. c. 7. as respects the maintaining or hiring out the labour of the poor by contract shall be repealed.

The visitors and guardians may make agreement with any person for the diet or cloathing of such poor persons as shall be sent to the houses provided by this act, and for their work and labour, provided such agreement be made for not longer than twelve months, and so as it be under the controul of the visitor, guardian, and governor; with power to two justices to dissolve the contract. *s. 2.* The visitors and guardians may make agreements for not exceeding 12 months.

In order to which agreement, whenever two parts in three in number and value of the owners or occupiers, according to their poor-rate, within any parish, township, or place, shall at a public meeting signify their approbation of the provisions herein contained, and shall then nominate to the justices three persons qualified for guardians; and three others for governors of the poor-house, and fix salaries to be paid to them, and shall procure the consent of two justices within that division to such agreement and salaries; they shall from that time be entitled to the benefits of this act. *s. 3.* Uniting for the purposes of this act.

And two or more parishes, townships, or places, may in like manner unite for the purposes aforesaid. Provided, that no parish, township, or place, distant more than ten miles from such poor-house, shall be permitted to unite with the parishes or places which shall establish such poor-house. *s. 4, 5.* Uniting of two or more parishes.

The notice for every public meeting under this act, shall be given in the church three *Sundays* before; and none shall vote at such meeting, unless he be owner or occupier of lands assessed to the poor-rate, after the rate of 5*l.* *per annum* at the least; nor shall any person vote as occupier, unless he shall be assessed to such poor-rate. *s. 6.* Notice of meetings to be given in the church.

All notices or applications, directed by any act to be given or made to the overseers, shall be given and made to the guardians; but if any orders of removal or notices shall happen to be given to the churchwarden or overseer, Notices directed by statute to be given to overseers, shall be given to the guardians.

the same shall be valid, and the churchwarden or overseer shall deliver the same to the guardian. *f. 7.*

Power of the guardians.

Where guardians are appointed, neither churchwarden nor overseer shall intermeddle in the care and management of the poor; but the guardian shall be invested with all powers given by any statute to the overseers of the poor, and in all respects, except in regard to making and collecting the rates, shall be an overseer; but the churchwardens and overseers shall continue to be liable to collect the poor-rate, and shall pay it to the guardian; or if two parishes or places are united, they shall pay over their quotas respectively to the treasurer of such united district. *f. 7, 8.*

Justices to appoint a governor.

And the justices shall appoint a governor of each poor-house, who may, on proof of misbehaviour or incapacity, be removed by the visitor or guardians. *f. 9.*

Visitor appointed in like manner.

And in like manner a visitor shall be appointed; who may appoint a deputy. The said visitor or deputy is to superintend every such house, to settle all doubts concerning those who are to be sent thither, to enforce the rules and regulations for the better accommodation and relief of the poor, and to settle accounts between guardians and treasurer. And the visitor or deputy shall be freed from the office of constable, and all parochial offices, and from serving upon juries, whilst he continues in such office. *f. 10, 11.*

Treasurer how appointed.

And the guardians shall recommend to the justices a treasurer, who shall appoint him accordingly; and such treasurer shall account before the guardians at every meeting, and shall once a year make out an account of the expences attending the poor-house, and of the number of poor persons, distinguishing their age and sex, and how they have been employed, and how much money has been earned by their labour in the year preceding, to be laid before the visitor, and if by him approved, shall be transmitted to the clerk of the peace, and by him laid before the sessions: and such treasurer shall be allowed an annual salary not exceeding 10*l.* as the visitor shall appoint. *f. 12.*

If, in the intermediate time, any vacancy shall happen in any of the said offices, by death, resignation, or removal; meetings shall be called as soon as conveniently may be, and the vacancies filled up in the manner before mentioned. *f. 13.*

Offices to determine yearly.

And the offices of guardian, governor, visitor, and treasurer, shall determine in *Easter* week yearly, on the day on which the public meeting for the purposes of this act shall be held. *f. 14.*

And

And the justices may hold special sessions for the purposes of this act, on giving proper notices to the several justices, peace-officers, and guardians. *f. 16.* Justices to hold special sessions.

The guardians shall provide houses, with proper buildings and accommodations, either by erecting new ones on land to be purchased or rented by them, altering old ones, or hiring buildings for the purpose; and fit them up with the advice of the visitor, at the proportionable expence of the several places respectively. *f. 17.* Houses to be provided.

But the poor-house shall be situate in the respective parish or township, or if several be united, then within one of the parishes or townships so united; and not elsewhere, without the consent of three parts in four in number and value as aforesaid. *f. 18.* Poor-house, where.

The houses which are to be hired shall be taken for not more than twenty-one years, nor less than three; and shall be free from all parochial and parliamentary taxes, except such as they were liable to at the time of taking thereof. *f. 19.* For what term to be taken.

And the visitor and guardian, where the expences, or their respective proportions shall amount to 100*l.* or upwards, may borrow the same at interest, and secure the same by a charge on the poor-rate, in sums not exceeding 50*l.* each, for the greater ease in discharging the same. And the guardians and their successors shall keep down the interest; and, when the principal shall be demanded, they may borrow it from some other person by assignment of the security. *f. 20.* The visitor and guardian may borrow money.

The visitors and guardians shall be a body corporate, and have power to purchase or lease any lands not exceeding in any city or town one acre, and in the open country twenty acres, for the site of a house and for lands to be occupied for the purposes of this act. *f. 21.* Purchasing lands.

And persons incapacitated, as infants, femmes-covert, and the like, shall have power to sell or lease, not exceeding the quantities aforesaid. *f. 22, 23.*

And the poor persons sent to every such house shall be maintained at the general expence of the parishes or places uniting. And the treasurer, with the assistance of the governor, shall provide all necessaries for the maintenance of such poor, and keep an account thereof. And the guardians shall meet at the poor-house on the first *Monday* in every month, to state and examine the accounts of the preceding month. At which meeting the treasurer shall produce his accounts, and the money due to him shall be settled and adjusted in proportion to the sums paid by the respective

pective parishes or places at a medium of three years, next before such agreement in writing. And the overseers, on pain of 5*l*. shall attend and give an account what has been the expence, at a medium for three years. *f*. 24, 25.

Monthly meetings.

If the guardian shall not attend the monthly meeting, or send some person to attend and make payments for him (if he cannot attend himself), he shall forfeit a sum not exceeding 5*l*., nor less than 40*s*. *f*. 26.

Inclosing commons.

The guardians may inclose from any waste or common, with the consent of the lord of the manor, and the major part in value of the persons having right of common thereon, any quantity not exceeding ten acres, for building upon or improving the same for the benefit of such poor house. *f*. 27.

Admitting paupers.

And every person sent to the poor-house shall deliver to the governor an order for his admission signed by one of the guardians. *f*. 28.

Who shall be sent to such poor-house.

But no persons shall be sent to such poor-house, except those who are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour, and except such orphan children as shall be sent thither by order of the guardian with the approbation of the visitor, and except such children as shall necessarily go with their mothers thither for sustenance. *f*. 29.

Children how to be provided for.

All infant children of tender years, and who shall become chargeable to the parish or place where they belong, may be either sent to such poor-house, or be placed by the guardian with the approbation of the visitor, with some reputable person at such weekly allowance as shall be agreed on, until such child shall be of age to go to service or bound apprentice; and the visitor shall see that they are so placed out, at the expence of the place to which they shall belong, according to the laws now in being: Provided, that if the parents or relations of such child so sent to such house, or any other responsible person, shall desire to receive and provide for him, the guardian may deliver him to such person: Provided also, that nothing herein shall give any power to separate any child under the age of seven years from his parent or parents without their consent. *f*. 30.

Idle persons able to work.

All such idle or disorderly persons as are able but not willing to work, and maintain themselves and families, shall be prosecuted by the guardians, and punished as idle and disorderly persons are directed to be, by the vagrant act of 17 G. 2. And if any guardian shall neglect to make complaint thereof against such person to some neighbouring justice within ten days after it shall come to his knowledge, he

he shall forfeit a sum not exceeding 5*l*. nor less than 20*s* ; half to the informer. *f*. 31.

Where any poor person shall be able and willing to work, and cannot get employment, the guardian may agree for the labour of such poor person at any employment suited to his strength and capacity, and maintain him until such employment shall be procured, and during the time of such work receive the money earned, and apply it in such maintenance, and make up the deficiency; and if such poor person shall refuse to work, or run away from such employment, the guardian shall complain to a justice, who shall on conviction commit the offender to the house of correction, to be kept to hard labour not exceeding three months, nor less than one. *f*. 32.

Persons unable to get employment.

The guardian of the poor for any parish or place shall provide, at the expence of such parish or place, suitable cloathing for the persons sent by him to such poor-house; and, on his neglecting so to do, the governor or one of the guardians of such house shall complain to a neighbouring justice, who shall summon the person complained of, and direct him to provide such cloathing; and if he shall not provide the same, within ten days after such direction, the justice shall order the governor of such poor-house to provide the same, and levy the price thereof, with costs and charges, by distress and sale of the goods of such guardian so making default. *f*. 33.

Cloathing.

The next section mentions rules, orders, and regulations to be observed at every such poor-house, specifying such additions as shall be made by the justices at a special sessions; provided that such additions be not contradictory to these same rules and orders, and that the same be not repealed at the quarter-sessions: and the governors shall cause such rules to be printed in plain legible characters, and fixed up in some conspicuous part of such house. *f*. 34.

Rules, orders, and regulations to be printed and fixed up in the house.

And every person receiving weekly relief shall wear the badge directed by the 8 & 9 *W*. unless directed otherwise by a justice, on proof of very decent and orderly behaviour. *f*. 35.

A badge to be worn.

If it shall appear that any such person is able and willing to work, but wants employment, the justice may order the guardian to procure him maintenance and employment in the manner herein before directed. Or if such person shall be an idle or disorderly person, and has not used proper means to get employment; or is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns

Industrious or idle persons how treated.

in alehouses or places of bad repute, does not maintain his wife or children; the justice may commit him to the house of correction for any time not exceeding three months, nor less than one. *Ib.*

Provided, that in places where a visitor is appointed, application shall be first made to the guardian; and if he refuses redress, then application shall be made to the visitor; and if he refuses, then application shall be made to a justice.

s. 36.

Occasional relief
to be ordered by
the justices.

On complaint made to a justice, on behalf of any poor person belonging to any parish or place, that the guardian has refused to such person proper relief, the justice (on enquiry into the circumstances upon oath) may order some weekly or other relief, or direct such guardian to send him to the poor-house, if he shall appear to be a fit object, to be kept and provided for there: which order shall be complied with by the guardian within two days after he shall have received it, on pain of 5*l.*; of which sum so much shall be paid to such poor person as the justice shall direct, and the remainder shall be applied as the other penalties by this act. *s. 37.*

Occasional poor
becoming sick.

And if any poor person shall be retarded on his passage through any parish or place where he has no legal settlement, by reason of any accident, sickness, or bodily infirmity, without means of subsistence, the guardian near the place where such object shall be, shall provide for him lodging and suitable nourishment and assistance (and cloathing if necessary), till he can be removed with safety; and, when he shall be fit to be removed, shall convey him to some neighbouring justices, who shall examine him on oath touching the place of his settlement, and make an order for his removal thither, if they think fit. And the parish officer, who shall so provide for such poor person, shall make a charge of the expences; which, on being allowed by the justices, shall be paid by the guardian of the parish or place where such person shall be settled, if it can be discovered, and if it be within the county. Or if such person shall die before he can be so examined, or shall be found dead in any parish or place to which he did not belong, the guardian of that place shall cause him to be buried in the parish or place where he so died or was found dead, and make a charge of the expences thereof; which, being allowed by a justice, shall be paid by the guardian of the place where such person shall appear to have been settled, if within the county; but if the settlement cannot be discovered

covered, or shall not be within that county, such expences shall be paid by the treasurer out of the county rate. *f. 38.*

Provided, that nothing herein shall extend to alter or affect the settlement of any person; or to give any illegitimate child born in a poor-house or workhouse established under the authority of this act, a settlement in the parish or place where such house shall be (but such child shall be considered as settled in the parish or place to which the mother belongs); or to alter any regulations established by act of parliament for any particular house of industry in any part of this kingdom. *f. 39.*

But nothing herein shall alter the settlement of any person.

Any poor person sent to such house, who shall embezzle or wilfully waste any of the goods or materials, shall be committed to the house of correction for any time not exceeding six months, nor less than two. *f. 40.*

Pauper embezzling goods.

Whereas it often happens that poor children, pregnant women, or persons afflicted with sickness or some bodily infirmity, are enticed or conveyed by parish officers or other persons, from one parish to another, without any legal order of removal, in order to ease the one parish, and to burden the other with such poor persons; if any guardian or other person shall so entice, convey, or remove, or cause or procure to be so enticed, conveyed, or removed, any such poor person from one parish to another which shall adopt the provisions of this act, without an order of removal from two justices, he shall forfeit a sum not exceeding 20*l.* nor less than 5*l.* *f. 41.*

Enticing poor persons to remove without a warrant.

Any visitor, guardian, or governor, who shall sell or furnish any materials, goods, cloaths, victuals, or provisions; or do any work in his trade for the use of any workhouse, poor-house, or poor persons, within any place for which he shall be appointed to act; or be concerned in trade or interest with any person who shall sell or furnish the same, shall forfeit a sum not exceeding 20*l.* nor less than 5*l.* *f. 42.*

Officer not to trade in materials, goods, &c.

The guardians, with the approbation of the persons qualified as aforesaid, may sell any house erected or purchased for the poor of such place; and also, by order of a justice, may remove the person or persons inhabiting the same or any other house provided at the expence of such parish or place, if they shall refuse to quit after fourteen days' notice. *f. 43.*

Guardians may dispose of the premises.

All penalties inflicted by this act to be recovered before one justice of the jurisdiction where the offender dwells, by distress; and, for want of sufficient distress, the offender shall be committed to the house of correction for any time not exceeding six months, nor less than one. Which penalties,

Penalties.

Appeal.

nalties, not herein otherwise directed, shall be paid to the treasurer towards defraying the expences of the house. *f. 45.*

Persons who think themselves aggrieved may appeal to the next sessions, giving eight days notice, and giving security by recognizance to pay the costs, in case the matter shall be determined against the appellant. *f. 46.*

This act also contains special precedents of forms of proceeding in some of the most material instances, which are inadmissible here, on account of their great length.

Popery.

I. Preliminary Observations.

II. Abolition of the Pope's Supremacy, and his Power of Presentation to Benefices.

III. Papists incapable of presenting to Benefices.

IV. Bringing Bulls and other Instruments from Rome.

V. Foreign Education of Papists, with Restrictions respecting Beads, Crosses, Relics, and Popish Books.

VI. Disabilities of Papists.

VII. Popish Baptism, Marriage, and Burial.

VIII. Children of Papists.

IX. Summoning Papists to take the Oaths.

X. Of double Taxes, registering Estates, and inrolling Deeds and Wills.

XI. Papists having Arms or Horses.

XII. Confining Papists to their Habitations, and not permitting them to come to Court, nor within Ten Miles of London.

XIII. Of Jesuits and Popish Priests.

XIV. Of saying and hearing Mass.

XV. Penalty of not repairing to Church.

XVI. Recusant conforming, how indulged.

I. Preliminary Observations.

The laws under this head chiefly relate to popish recusants.

THE laws for restraining the growth of popery, and by which papists are subjected to divers penalties, forfeitures, disabilities, and inconveniencies, may be considered in

in general as relating to popish recusants; such as refuse to make the declaration against popery, and promote, encourage, or profess the popish religion: and these laws, though made for the advancement of religion, and the public good, yet being considered as penal laws, have, like all other penal laws, been construed strictly. 3 Bac. Abr. 779.

It does not certainly follow that a *recusant* must be a *papist*: a *recusant* is any person who refuses to go to church, and worship God, after the manner of the church of *England*: a *popish recusant*, is a *papist* who so refuses: and a *popish recusant convicted*, is a *papist* legally convicted thereof.

Popish recusants are not only liable to all the forfeitures, disabilities, and inconveniencies to which other recusants are liable; but also to many others, to which other recusants are not liable.

Several statutes were made against recusants in the reign of queen *Elizabeth*, and in the former part of that of king *James* the First, which are not restrained to popish recusants only: but as there were few other recusants than *papists* at that time, they principally relate to persons of that profession, and are therefore inserted under this title: tho' the words of them extend, and the act of toleration supposes them to extend, to nonconformists in general. The force of them indeed, as to protestant dissenters, is taken away by that act; but no *papist*, or *popish recusant*, shall have any benefit by the act of toleration.

What are recusants, and popish recusants.

What popish and other recusants are liable to.

Observations on the statutes against recusants.

II. Abolition of the Pope's Supremacy, and of his Power of Presentation to Benefices.

By the 27 Ed. 3. st. 1. c. 1. (called the statute of *provisors*), Persons suing in a foreign realm, or impeaching judgment given in the king's court, shall incur a *præmunire*: that is, shall have a day given to appear in person to answer to the contempt; and, if they come not, they shall be out of the king's protection, their lands and goods shall be forfeited, and their bodies imprisoned and ransomed at the king's will.

Suing in a foreign realm.

And by the 13 R. 2. st. 2. c. 3. If any bring into the realm a summons or excommunication against any one executing the statute of *provisors*, he shall suffer pain of life and member.

Bringing a summons or excommunication.

The 5 Eliz. c. 1, enacts, That any person who shall maintain the authority of the see of *Rome* in this realm, shall incur a *præmunire* for the first offence, and for the

Penalty on maintaining the authority of the see of *Rome*.

second

second he shall be guilty of high treason. Prosecution to be commenced within a year: and the justices in sessions may enquire thereof, and shall certify the same into the King's Bench. *f. 2, 3, 4, 10, 11.*

Withdrawing
subjects from
their allegiance.

And by the 3 *Jac. c. 4*, If any person shall put in practice to absolve or withdraw any subjects from their allegiance, or if any person shall be willingly so absolved or withdrawn; he, his aiders and maintainers, shall be guilty of high treason. The trial to be at the assizes or King's Bench. *f. 22, 23, 25.*

Disturbing.

By the 25 *Ed. 3. fl. 6*, No person, by authority from the court of *Rome*, shall disturb any person of the holy church, presented or collated by the king or his subjects, on pain of fine and imprisonment.

Taking a benefice from an alien.

And by the 3 *R. 2. c. 3*, No person shall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a *præmunire*.

Aliens not to enjoy a benefice.

Also by the 7 *R. 2. c. 12*, No alien shall purchase or occupy a benefice in *England*, on pain of a *præmunire*.

Procuring a benefice abroad.

And the 12 *R. 2. c. 15*, enacts, That he who shall go out of the realm to procure a benefice, shall be out of the king's protection; and the same shall be void.

Accepting a benefice from the pope.

Further, by the 13 *R. 2. fl. 2. c. 2*, Any person who shall accept a benefice from the pope, shall be banished forever; and his lands and goods shall be forfeited.

And no provision of a benefice not vacant, made by the pope, and licensed by the king, shall be available; but persons endeavouring to exclude the incumbent thereby, shall incur a *præmunire*. 7 *H. 4. c. 8.* 3 *H. 5. fl. 2. c. 4.*

III. Papists incapable of presenting to Benefices.

A popish recusant shall not present to livings.

By the 3 *Jac. c. 5. f. 18*, A popish recusant convict shall be disabled to present, or grant any avoidance, to any ecclesiastical living, or nominate to any free-school, hospital, or donative.

Nor those refusing to make the declaration against popery. Trustee.

And by the 1 *W. c. 26*, This disability is extended to persons refusing to make the declaration against popery, as directed by the 30 *C. 2.*

And by the 1 *W. c. 26. f. 3*, Where a person shall be possessed of any right of representation or nomination as aforesaid, in trust for any papist or popish recusant, who shall be convicted or disabled by the 3 *Jac. c. 5*, or by the 1 *W. c. 26*, such trustee shall be disabled to present or nominate, or to grant any avoidance thereof.

The

The ordinary may tender the declaration against transubstantiation to any reputed papist making a presentation; and, upon a refusal to take the same, the presentation shall be void. 12 Ann. st. 2. c. 14.

Declaration against transubstantiation.

It is also enacted by the same statute, s. 1, That every papist, or person making profession of the popish religion (whether convicted by either of the former acts or not) and every child not being a protestant, under the age of twenty-one, of every such papist, and every mortgagee, trustee, or person any ways intrusted, directly or indirectly, by or for any such papist, or such child as aforesaid, whether such trust be declared by writing or not, shall be disabled to present or nominate.

Other disabilities respecting presentation.

And the chancellor and scholars of the university of Oxford shall present and nominate to the same, in the counties of Oxford, Kent, Middlesex, Sussex, Surry, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcester-shire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokeshire, Caermarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the city of London, and other cities and towns within the said counties. 3 Jac. c. 5. s. 19.

Counties in which the university of Oxford has the right of presentation.

And the chancellor and scholars of the university of Cambridge shall present and nominate in the following counties, viz. Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Angleseyshire, Merionethshire, Glamorganshire, and other cities and towns within the said counties. Id. s. 20.

Counties in which the university of Cambridge shall present.

But by the 1 W. c. 26, The chancellor and scholars shall not present to any such ecclesiastical living a person who shall then have any other benefice with cure of souls; nor shall the person presented be absent from it above sixty days in any one year. s. 5, 6.

Restrictions.

If any trustee, mortgagee, or grantee of an avoidance, shall present or nominate to any such living, free-school, or hospital, whereof the trust shall be for any recusant convict, or disabled, without giving notice in writing to the university, in three months after the avoidance shall happen, he shall forfeit 500l. to the university.

In trust for a recusant convict, or disabled.

And by the 11 G. 2. c. 17. s. 5, Every grant of an ecclesiastical living, school, hospital, or donative, by any papist or

Grant by a papist shall be void.

or trustee for him, shall be void, unless made *bona fide* for a full and valuable consideration to a protestant purchaser: and every devise thereof, with intent to secure the benefit thereof to the heirs or family of such papists, shall be void.

IV. Bringing Bulls and other Instruments from Rome.

Purchasing or bringing bulls into the realm.

The 16 R. 2. c. 5, (called the statute of *præmunire*) enacts, That if any person shall purchase, or bring into the realm, any bulls or instruments from Rome, or elsewhere, they shall incur a *præmunire*; that is to say, they shall be put out of the king's protection, and their lands and goods shall be forfeited to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or else process shall be awarded against them by *præmunire facias*, a writ so called from having those words in it.

High-treason, by 13 Eliz.

And by the 13 Eliz. c. 2, If any person shall get or publish any bull or instrument from Rome, he shall be guilty of high-treason; and his aiders and comforters shall incur a *præmunire*: and concealing the same shall be misprision of high-treason. s. 3, 4, 5.

And by the 23 Eliz. c. 1. s. 8, The justices of the peace may inquire thereof within a year and a day.

V. Foreign Education of Papists, with Restrictions respecting Beads, Crosses, Relics, and Popish Books.

Contributing to foreign seminaries.

By the 27 Eliz. c. 2. s. 6, Persons who shall contribute or send over sea, money or relief to any seminary abroad, he shall incur a *præmunire*.

Not returning from them.

And by the same statute, s. 5, Those who are in seminaries abroad, shall return in six months after proclamation, and conform in two days, before the bishop or two justices of the peace; otherwise, if they return at all, without submission, they shall be guilty of high-treason.

Going or sending persons abroad to be popishly educated.

If any person shall go, or send a person beyond the seas, to be popishly educated, who shall be there so instructed, or shall send money or other things for that purpose; he shall, on conviction before the judges of the King's-Bench, or of assize, be disabled to be a plaintiff in any action, or to be committee of any ward, or executor or administrator; or to be capable of any legacy or deed of gift, or to bear any office; and he shall also forfeit his goods, and his lands during

ring life. But if he shall conform within six months after his return, he shall be discharged. 3 C. c. 2. 1 Jac. c. 4.

f. 6, 7.

By the 3 Jac. c. 5. f. 16, Children not being soldiers, mariners, merchants, or their apprentices or factors, departing the realm on account of education, or otherwise without licence from the king, or six of the privy-council, shall have no benefit by any gift, conveyance, descent, devise, or otherwise, of any lands or goods; until they conform. Sending children abroad for education.

And a person who shall send any such child over seas, without licence, shall forfeit 100l. to him who shall sue in any court of record. 3 Jac. c. 5. f. 16. 11 & 12 W. c. 4.

f. 6.

And by the 1 Jac. c. 4. f. 8, No woman, or child under twenty-one years of age, shall pass over sea without licence of the king and council; on pain that the officer of the port shall forfeit his office and his goods, the owner of the ship his vessel, and the master his goods, and be imprisoned twelve months. Penalty. Women and children.

And by the 25 C. 2. f. 8, No person, who shall not have been bred up by his parents in the popish religion, shall breed up, or suffer his children to be bred up in the popish religion; on pain of being disabled to bear any office until he conform. Persons not bred up in the popish religion.

By the 13 Eliz. c. 2, If any person shall bring into the realm any *agnus dei*, crosses, pictures, beads, or such like vain and superstitious things, from the bishop of Rome, or any person authorized by him to consecrate them, and offer them to any person to be worn or used: both the bringer and receiver shall incur a *præmunire*: but if the receiver shall, in one day's time, deliver them to a justice, or if such person to whom they are offered shall carry the bringer before the next justice, or (if he cannot) shall disclose the offender's name and place of abode or resort, to the bishop, or to a justice, he shall not incur such *præmunire*. And in such case, the justice in fourteen days shall signify the same to one of the privy-council, on pain of incurring a *præmunire*. f. 7, 8, 10. Bringing superstitious things into the realm from the bishop of Rome.

N. B. With regard to importing, printing, buying, or selling popish books, or having them in custody; see title BOOKS, vol. i. 320.

VI. Disabilities of Papists.

A recusant convict shall not practice the law, nor physic, nor be an officer in any court, nor be a captain, lieutenant, corporal, &c.

By the 3 *Jac. c. 5. f. 8*, No recusant convict shall practise the common law, as a counsellor, clerk, attorney, or solicitor; nor the civil law, as advocate or proctor; nor practise physic, nor be an apothecary; nor shall he be a judge, minister, clerk, or steward of or in any court, or keep any court, nor register or town-clerk, or other minister or officer in any court; nor shall bear any office or charge, as captain, lieutenant, corporal, serjeant, ancient-bearer, or other officer in camp, troop, band, or company of soldiers; nor shall be captain, master, governor, or bear any office or charge of or in any ship, castle, or fortress; but be utterly disabled for the same; and every person offending herein, shall forfeit 100*l*; half to the king, and half to him who shall sue.

Having a wife a recusant convict.

And no popish recusant convict, nor any having a wife being a recusant convict, shall exercise any public office, unless such husband, and his children, above nine years old, and his servants, go to church and conform. *Id. f. 9.*

He cannot be an executor, administrator, or guardian.

And by the same statute, *f. 22, 23*, A popish recusant convict shall be disabled to be executor, administrator, or guardian; but the wardship shall go to the next of kin, not being a recusant, to whom the estate cannot lawfully descend.

As a person excommunicated.

And every popish recusant convict shall be to all intents and purposes disabled, as a person excommunicated, and as if he had been so denounced by the laws of the realm. *Id. f. 11.*

And on process to the sheriff, for apprehending a popish recusant excommunicated, he may break open a house, or raise the power of the county. *Id. f. 35.*

VII. Popish Baptism, Marriage, and Burial.

Popish baptism.

The 3 *Jac. c. 5. f. 14*, enacts, That every popish recusant shall, within one month after the birth of any child, cause it to be baptized by a lawful minister in open church; or, if it is infirm, to be baptized by a lawful minister, on pain of 100*l*; one third to the king, one third to him who shall sue, and one third to the poor.

Popish marriage.

And by the same statute, *f. 13*, Every *man*, being a popish recusant convict, who shall be married otherwise than in some open church or chapel, and otherwise than according to

to the orders of the church of *England*, by a minister lawfully authorised, shall be utterly disabled and excluded to have any estate of freehold into the lands of his wife, as tenant by the courtesy of *England*; and if she have no lands, he shall forfeit 100*l*; half to the king, and half to him who shall sue: and every woman, being a popish recusant convict, who shall be married in any other form than as aforesaid, shall be utterly excluded and disabled, not only to claim any dower or jointure, but also her widow's estate and frankbank in her husband's customary lands, and disabled to have any part of his goods.

And the 26 G. 2. c. 33, enacts, That if they shall be married any where in *England*, other than in a church or chapel (unless by special licence from the archbishop of *Canterbury*) or without publication of bans, or licence, the marriage shall be void. What marriage shall be void.

By the 3 Jac. c. 5. s. 15, If any popish recusant, not being excommunicate, shall be buried in any place, other than the church or churchyard, or not according to the ecclesiastical laws, the executors or administrators of such person shall forfeit 20*l*; one third to the king, one third to the informer or person who shall sue, and one third to the poor. Popish burial.

VIII. Children of Papists.

By the 1 Jac. c. 4, If the heir of a popish recusant shall be under sixteen years of age at the death of such recusant, and shall after such age become recusant, he shall be charged with the penalties happening to him by reason of such his ancestor's recusancy, until he shall conform. s. 3, 4. Heir of a popish recusant not conforming.

And the 11 and 12 W. c. 4, enacts, That if a popish parent, in order to compel his child, being a protestant, to change his religion, shall refuse to allow him a proper maintenance, the lord chancellor may make order therein. Protestant children having popish parents.

IX. Summoning Papists to take the Oaths.

The toleration act enacts, That if any person, being required by a justice, shall refuse to take the oaths of allegiance and supremacy, and to make and subscribe the declaration against popery of the 30 C. 2. he shall be committed by such justice to prison; and, at the next sessions, if he shall again refuse to make and subscribe the said declaration, he shall be deemed a popish recusant convict, and shall suffer accordingly. s. 12. Refusing to take the oath of allegiance and supremacy.

And

Justices may
summon sus-
pected persons,

And by the 1 G. 2. c. 13, Two justices are autho-
rised and required to summon persons whom they suspect to
be disaffected, by writing under their hands and seals, to ap-
pear before them at a time prefixed, to take the oaths of al-
legiance, supremacy and abjuration: which summons shall
be served on such persons, or left at their dwelling-houses,
or usual place of abode, with one of their respective families
there; and if any such person shall neglect or refuse to ap-
pear, then, on due proof made upon oath of serving the sum-
mons, they shall certify the same to the next sessions, to be
there recorded: and if such person shall not appear and take
the oaths at the said sessions (his name being publicly read
at the first meeting of the said sessions), he shall be taken and
adjudged a popish recusant convict: and the same shall be
from thence certified by the clerk of the peace, into the
Chancery or King's Bench, to be there recorded. s. 10, 11.

*X. Of double Taxes, registering Estates, and inrolling
Deeds and Wills.*

Double land-
tax.

The annual land-tax acts enact, That papists and reputed
papists, being eighteen years of age, who shall not have
taken the oaths of allegiance and supremacy, shall pay double
land-tax.

Estates coming
to protestants.

By the 10 G. 3. c. 6. s. 113, Estates doubly taxed, coming
to protestants, are to be discharged.

Papists to re-
gister their
estates.

But by the 1 G. 2. s. 55, Every person being a po-
pish recusant, or papist, or whose parent or parents shall be
a papist or papists, or who shall profess the popish religion,
shall, within six months after he shall be of the age of twen-
ty-one years, take the oaths of the 1 G. c. 13, and make
the declaration against popery of the 30 C. 2, in one of the
courts at *Westminster*, or the quarter-sessions; or in default
thereof shall, within six months afterwards, and within six
months after he, or any trustee for him, shall come into
the possession of any lands, register the same; where they
lie; who is the possessor of them; what estate he has in
them; the yearly rent, if let; if let upon lease, who made
it, what rent, what fine; when registred; in a parchment
book or roll to be kept by the clerk of the peace. s. 1.

And his name shall be subscribed to the registry, in the
presence of two justices in open sessions, by himself or his
lawful attorney (the warrant being proved by two wit-
nesses and entered of record), and two justices shall sub-
scribe their names as witnesses (on pain of 20*l.*) that the
entry

entry was duly made. And the clerk of the peace shall, on application made at least ten days before the sessions, enter the same before such sessions; and shall be paid 3*d.* for every two hundred words of the registry and entry of record, and for every copy thereof, and for any one comparing the same with the originals; and 4*d.* for every search. And if the clerk of the peace shall not do his duty herein, he shall forfeit his office. *Id.*

And by the 3 G. c. 18. f. 3, Such lands shall be registered in the county, where the house thereupon stands. Where to be registered.

Also by the 1 G. f. 2. c. 55, Persons not qualifying or registering, or not registering truly, shall forfeit such lands, or the value thereof; two thirds to the king, and one third to him who shall sue at common law or in chancery. f. 1. Penalty on not registering.

But by the 3 G. c. 18. f. 2, No action for any forfeiture for not registering, or for registering fraudulently, shall be brought after the expiration of two years from the time the offence was committed. Limitation of action.

No manors, lands, tenements, or hereditaments, or any interest therein, or rent or profit thereof, shall pass, alter, or change from any papist by any deed or will, except such deed within six months after date, and such will within six months after the death of the testator, shall be inrolled in one of the courts of record at *Westminster*, or within the county where they lie, by the *custos rotulorum*, and two justices, and the clerk, or deputy-clerk of the peace, or two of them at least, whereof the clerk of the peace, or his deputy, shall be one. 3 G. c. 18. f. 6. 21 G. 3. c. 51. Deeds and wills to be inrolled.

But there is usually an indemnifying clause in some act of parliament, every two or three years; provided such deeds and wills are inrolled on or before the time therein mentioned. Indemnifying clause.

And by 10 G. c. 4. f. 19, Leases made by papists to protestants, whereon the full yearly value, or the ancient or most accustomed yearly rent or more shall be reserved, are not required to be inrolled. Leases made by papists to protestants.

And no purchase made for a valuable consideration, by and for the sole benefit of a protestant, shall be avoided because any deed or will, through which the title is derived, has not been inrolled; if no advantage was taken thereof before the purchase, and no decree or judgment has been obtained for want of such inrollment.

But nothing herein shall extend to make good any grant, lease, or mortgage of the advowson, or right of presentation, collation, nomination, or donation, of and to any benefice,

prebend, or ecclesiastical living, school, hospital, or donative, or any avoidance thereof, made by any papist, in trust by and for any such person, whether such trust has been declared by writing or not.

XI. Papists having Arms or Horses.

Two justices are required to tender the declaration to a papist to subscribe.

By the 1 *W. c.* 15, Any two justices who shall know, suspect, or be informed, that any person is, or is suspected to be a papist, may and are required to tender him the declaration in the statute of the 30 *C.* 2; and if he shall not appear, after notice by warrant under hand and seal delivered to him, or left at his usual place of abode; or shall not make and subscribe the declaration, he shall be disabled to keep in his house or elsewhere, or in the possession of any other person to his use, any arms, gunpowder, or ammunition, except only such weapons as shall be allowed by the sessions for the defence of his house or person. And two justices may, by warrant, authorise in the day-time any person, assisted by the constable, to search such person's house for the same, and seize them for the use of the king. And the said justice shall deliver the same in open court at the next sessions for the use aforesaid; where they shall also certify the name and place of abode of every person so subscribing or not subscribing. *f.* 2, 3, 4.

Arms may be searched for.

And by the same statute, *f.* 5, Every such person, not discovering and delivering them up to some justice, in ten days after default in not appearing, or not subscribing as aforesaid, or hindering the seizure, shall be committed to gaol by two justices for three months, and shall forfeit the arms, and pay treble value of them to the king, to be appraised by the justices at the next sessions.

Concealing or conniving.

And any other person who shall conceal, or knowing thereof shall not discover to a justice such arms or ammunition, or shall hinder the seizing thereof, shall by two justices be committed to gaol for three months, and shall forfeit to the king treble the value of the arms. *Id.* *f.* 6.

Persons discovering arms to be rewarded.

And persons discovering such arms or ammunition, so as they shall be seized, shall have a reward equal to the value thereof, ordered by the sessions, out of the goods of the offender, to be levied by distress. *Same stat.* *f.* 7.

And by the 3 *Jac. c.* 5. *f.* 29, Notwithstanding such armour, gunpowder, and munition be taken away, such popish recusant shall be charged with the providing and maintaining

ing of horse and other armour and munition, as other subjects, according to their several abilities.

By the 1 W. c. 15. §. 9, Every papist making default in not appearing, or not subscribing, (as abovementioned) shall not keep in his possession, or in the possession of any other to his use, or at his disposition, any horse above the value of 5*l*. to be sold, and two justices may authorise any person, with the assistance of a constable, to seize all such horses for the king's use.

Papists not conforming shall not keep a horse worth more than 5*l*.

And by the same statute, §. 10, Any person who shall conceal, or assist in concealing any such horse, shall be committed by warrant of two justices to prison for three months, and shall forfeit treble the value of such horse to the king.

Penalty for concealing such horse.

XII. Confining Papists to their Habitations, and not permitting them to come to Court, nor within ten Miles of London.

By the 35 Eliz. c. 2. §. 3, 5, Every person exceeding sixteen years of age, being a popish recusant, and having any certain place of abode, who being convicted for not repairing to some church, chapel, or usual place of common prayer, to hear divine service there, but forbearing the same contrary to law, shall within forty days after conviction, (if within the realm, and not hindered by imprisonment, by command of the king or council, or by sickness, and then in twenty days after the removal of such impediment) repair to his usual dwelling, and shall not remove above five miles from thence, unless licensed as is herein after directed, on pain of forfeiting his goods, and to the king his lands during life, unless they are customary or copyhold, and then to the lord of the manor.

Papists convicted of not repairing to church.

And having repaired to their dwelling, they shall within twenty days notify their coming, and present themselves, and deliver their true names in writing to the minister of the parish, and to the constable, and the minister shall enter the same in a book. *Id.* §. 6.

And the minister and constable shall certify the same in writing to the next sessions; and the clerk of the peace shall enter the same in the rolls of the sessions. §. 7.

And if such popish recusant (not being a feme-covert) have not lands of twenty marks a year, or goods worth above forty pounds, and shall not conform in three months, being thereto required by the bishop, or a justice, or the minister, he shall abjure the realm before two justices, or the coroner,

who shall enter the same of record, and certify the same at the next assizes. And if he shall refuse to abjure, or not depart, or return, he shall be guilty of felony without benefit of clergy. *f. 8, 9, 10.*

Form of abjuring.

The form of *abjuring*, according to the ancient books, is as follows: "This hear you, sir coroner, that I *A. B.* of _____ in the county of _____ am a popish recusant, and "in contempt of the laws and statutes of *England*, I have "and do refuse to come to their church: I do therefore, "according to the intent or meaning of the statute made in "the 35th year of queen *Elizabeth*, late queen of this realm "of *England*, abjure the realm of *England*. And I shall "haste me towards the port of *C.* which you have given "and assigned to me, and that I shall not go out of the "highway, leading thither, nor return back again; and "if I do, I will that I be taken as a felon of the king. "And that at *C.* I will diligently seek for passage, and will "tarry there but one flood and ebb, if I can have passage: "and unless I can have it in such place, I will go every "day into the sea up to my knees, assaying to pass over. "So help me God and his doom." *Stam. 116. Mir. b. 1. Offic. Cor. 49.*

But by the 35 *Eliz. c. 2. f. 13, 14*, If such person restrained shall be urged by process, or be bound to appear in any of the king's courts, or be sent for by the council, or be bound to render his body to the sheriff on proclamation, he shall incur no penalty for removing for such purpose.

Licence to remove.

And popish recusants confined to their habitations by the 35 *Eliz.* may be licensed to remove, by the king; also by three or more of the privy council, in writing under their hands; who may give licence to such recusant, to travel beyond the compass of five miles, for the time mentioned in his licence, for his travelling, attending, and returning, and without any other cause expressed in the licence.

Also if such recusant shall have necessary business, then, upon licence in writing under the hands and seals of four of the next justices of the county or place, with the assent in writing of the bishop; or of the lieutenant or a deputy lieutenant of the county residing therein, under their hands and seals; in which licence shall be specified the cause of the licence, and the length of time the party licensed shall be absent in travelling, attending, and returning: in such case the person licensed may travel about such his necessary business, and for the time mentioned in his licence; first taking oath before the said four justices, or any of them, that he has truly informed them of the cause of his journey, and that

that he shall not make any unnecessary stay. And such person departing upwards of five miles, not having such licence, and not having taken such oath, shall incur the penalty of the 35 *Eliz.* above mentioned. 3 *Jac. c. 5. s. 7.*

The 30 *C. 2. s. 2. c. 1.*, enacts, That no peer shall vote or make his proxy in the house of peers, or sit there during any debate; and that no member of the house of commons shall vote or sit there during any debate after the speaker is chosen; or shall come into the king's presence, or the court or house where he is (without licence from six of the privy council) until such peer or member shall take the oaths of allegiance and supremacy, and make a declaration of his belief that there is no transubstantiation in the sacrament of the Lord's Supper, and that the invocation or adoration of the virgin *Mary*, or any other saint, and the sacrifice of the mass, as they are now used in the church of *Rome*, are superstitious and idolatrous, &c. on pain that every such offender shall be adjudged a popish recusant convict, and disabled to hold or execute any office, &c. or from henceforth to sit or vote in any house of parliament, or to be a plaintiff, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, and shall forfeit for every offence 500*l.* to him who shall sue.

Persons going to court, not having taken the oath of allegiance, supremacy, &c. shall be deemed recusants conv.

And by the 3 *Jac. c. 5. s. 2.*, No recusant convict shall come into the court or house where the king or his heir apparent shall be (unless commanded by the king or council) on pain of 100*l.*; half to the king, and half to him who shall discover and sue in any court of record.

Popish recusant convict going to court.

By the 3 *Jac. c. 5. s. 4.*, All popish recusants, who shall come, dwell, or remain in the city of *London*, or within ten miles thereof, who shall be indicted or convicted of such recusancy, or who shall forbear going to church to hear divine service for three months, shall, within ten days after such indictment or conviction, depart from the said city, and ten miles compass of the same; and also, within the said time, deliver up their names to the lord mayor, if they dwell in the city or liberties of *London*; and if in any other county, within ten miles of the city, they shall deliver up their names to the next justice, on pain of 100*l.*; half to the king, and half to him who shall sue.

Popish recusants not to come within ten miles of *London*.

And by the 1 *W. c. 9.*, the better to discover papists within ten miles of *London*, it is enacted, That every justice of peace of *London* and *Westminster*, and within ten miles thereof, shall cause to be arrested and brought before him all reputed papists, (except foreigners, being merchants or menial servants to some ambassador or public agent; and

except all such as used some trade, mystery, or some manual occupation at the time of the said act, in *London*, &c. and also except all such persons as had their dwelling in *London*, &c; and that every such justice shall tender the said declaration to every such person; and that every such person refusing the same, and afterwards remaining in *London*, or within ten miles thereof, shall suffer as a popish recusant convict. The justice to certify such subscription, on refusal, into the King's Bench, or to the next quarter-sessions.

XIII. Of Jesuits and Popish Priests.

Sending relief
to jesuits and
popish priests.

By the 27 *Eliz. c. 2. s. 6*, Any person who shall contribute, or send over sea, money or other relief to any jesuit or popish priest, shall incur a premunire.

Discovering
persons who re-
lieve a jesuit,
popish priest,
&c.

And by the 3 *Jac. c. 5. s. 1*, The person who shall first discover to any justice, any one who shall entertain or relieve any jesuit, seminary, or popish priest, within three days after the offence, so that by reason of such discovery any offender shall be taken and convicted; such person shall not only be freed from any penalty for such offence, if he should be an offender therein, but shall also be entitled to one third part of the forfeitures if they do not exceed 150*l*; and, if they exceed 150*l*. he shall then have 50*l*.

Being in the
realm.

And the 27 *Eliz. c. 2*, enacts, That no jesuit or popish priest shall come into or be in the realm, on pain of high-treason, unless he conform.

Receiving or
relieving them
felony.

And by the same statute, *s. 4*, Any person who shall knowingly receive or relieve any such, shall be guilty of felony without benefit of clergy. If a suspected jesuit or popish priest, being lawfully examined, shall refuse to answer whether he be a jesuit or popish priest, he shall be imprisoned till he make direct or true answer. *Id. s. 11*.

Knowing and
not discovering.

And any person knowing such jesuit or priest to be in the realm, who shall not in twelve days discover the same to a justice or higher officer, shall be fined and imprisoned at the king's pleasure. And if such justice, or other higher officer, shall not in twenty-eight days give information thereof to one of the privy-council, he shall forfeit two hundred marks. *Id.*

XIV. Of saying and bearing Mass.

Saying mass.

By the 23 *Eliz. c. 1*, Any person who shall say or sing mass, being thereof lawfully convicted, shall forfeit two hundred marks, and be imprisoned for a year, and till paid.

And

And any person who shall wilfully hear mass, shall forfeit ^{Hearing mass,} one hundred marks, and be imprisoned for a year. *f. 4.*

The forfeitures to be thus applied: one third to the king, one third to the poor, and one third to the person who shall sue in any court of record. If not paid in three months after judgment, the offender shall be committed till he pays, or conforms: and the sessions may determine the same. *f. 9, 10, 11.*

And by the 29 *Eliz. c. 6. f. 1.* Any conveyances made by recusants to evade the penalties for saying or hearing mass, shall be void.

And the 3 *Jac. c. 5. f. 1.* enacts, That any person who shall first discover to any justice any mass to have been ^{Reward for discovering mass,} said, and the persons who were present thereat, and the priest who said the same, or any of them, within three days after the offence, and by reason of such discovery any offender is taken and convicted, he shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have one third part of the forfeitures, if they do not exceed 150*l.*; and if they exceed 150*l.* he shall have 50*l.*; and after conviction of the offender, he shall have a certificate from the judges, or justices before whom the conviction shall be, directed to the sheriff or person who shall seize the goods, or levy the forfeiture, commanding him to pay the same,

XV. Penalty of not repairing to Church.

All persons who have no lawful or reasonable excuse to be absent, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where divine service shall be performed, according to the liturgy and practice of the church of *England*, on every *Sunday* and holiday, on pain of punishment by the censures of the church, or of forfeiting to the poor for every offence 1*s.* to be levied by the churchwardens by way of distress. *1 Eliz. c. 2. f. 14, 24.* ^{Penalty on not going to church, by 1, *Eliz. c. 2.*}

Except dissenters qualified by the act of toleration, who resort to some congregation of religious worship allowed by that act. *1 W. c. 18. f. 2, 16.*

But any person who shall usually, on *Sundays*, have in his house divine service as established by law, and shall himself be usually present thereat, and shall at least four times in the year go to the parish church, or other common church or chapel, he shall not incur any penalty for not repairing to church. *23 Eliz. c. 1. f. 12.* ^{Persons having divine service at home excepted.}

But he who is absent from his own parish church, shall be put upon the proof where he went to church. 1 *Haw.* 13.

And by the 3 *Jac. c. 4.* One justice, on proof (in one month after default,) by confession, or oath of one witness, may call the party before him; and if he shall not make sufficient excuse, and due proof thereof to the satisfaction of such justice, he shall give warrant to the churchwarden to levy 12*d.* to the use of the poor of the parish for every default by distress and sale, rendering the overplus: for want of distress, commitment till paid. *f. 27, 28.*

Further penalty
on not going to
church, by 23
Eliz. c. 1. and
29 *Eliz. c. 6.*

Every person above sixteen years of age, who shall not repair to some church, chapel, or usual place of common prayer, being convicted thereof before the judges of assize, or justices in their open quarter-sessions, shall forfeit 20*l.* a month; one third to the king, one third to the support of the poor of the parish, and of the houses of correction and of impotent and maimed soldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If not paid in three months after judgment, the offender shall be imprisoned till he pay, or conform himself to go to church. 23 *Eliz. c. 1. f. 5, 11.* 29 *Eliz. c. 6. f. 7.*

Persons convicted
shall pay 20*l.*
a month.

By the 3 *Jac. c. 4. f. 8.* Every offender in not repairing to church, being once convicted, shall pay into the Exchequer at *Easter* or *Michaelmas* term, which shall first happen after the conviction, 20*l.* for every month contained in the indictment; and shall afterwards, without any other indictment or conviction, pay into the exchequer at every *Easter* and *Michaelmas* term 20*l.* for every month till he conform; except where the king may refuse the same, and take two parts of the lands as hereafter mentioned.

Or the king may
seize two parts
in three of his
lands.

And by the same statute *f. 9.* Every conviction recorded shall by the court be certified into the Exchequer, and, if default shall be made in any part of payment, the king may by process take the goods, and two parts in three of the lands of the offenders.

Or the king may refuse the penalty of 20*l.* a month for not coming to church, and in lieu thereof seize two parts in three of the offender's lands, and keep them till he conform. *Id. f. 10, 11.*

And where seizure shall be made of two parts in three of the lands, for the penalty of 20*l.* a month, such two parts shall, according to the extent thereof, go towards payment, but the third part shall not be extended or seized. And when the recusant shall die, and the said penalty not paid, the

the king shall keep the two parts until the whole be thereby or otherwise paid. 1 *Jac. c. 4. f. 5.*

Conveyances made by recusants to evade the penalties for not coming to church, shall be void. 29 *Eliz. c. 6. f. 1.*

And, by the 3 *Jac. c. 4.* Every person who shall retain in his service, or relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10*l.* for every month he shall continue in his house such person so forbearing; and the sessions may hear and determine the same. *f. 32, 33, 36.*

Retaining or harbouring persons who shall not go to church.

And by the same statute, *f. 7.* The justices in sessions shall have power to enquire, hear, and determine of all recusants and offences for not repairing to church; and shall have power at the sessions, where an indictment is taken for such offence, to make proclamation, by which it shall be commanded that the body of the offender shall be rendered to the sheriff, bailiff, or gaoler, before the next sessions: and if he shall not appear of record at the next sessions, then, upon such default recorded, he shall stand convicted. 3. *Jac. c. 4. f. 7.*

Justice in sessions to hear and determine these offences.

And the churchwardens and constables, (on pain of 20*l.*) shall present at the quarter-sessions once a year, the monthly absence from church of all recusants, and the names and ages of their children above nine years of age, and the names of their servants. And the presentments shall be entered by the clerk of the peace without fee, on pain of 40*s.*: and if the party presented shall be indicted and convicted, such churchwarden or constable shall have a reward of 40*s.* to be levied of the recusant's goods by warrant of the justices in sessions. *Id. f. 4, 5, 6.*

Churchwardens and constables to present recusants.

Finally, by the same statute, *f. 16.* No indictment or other proceeding against recusants shall be reversed (unless they conform) for want of form, nor by any thing but direct traverse to the point of not coming to church.

No proceeding to be reversed for want of form.

Recusant conforming, how indulged.

By the 1 *Jac. c. 4. f. 2.* A recusant conforming, shall be discharged of the penalties which he might otherwise sustain in respect of his recusancy.

Recusant conforming.

And the 11 *G. 2. c. 17.* enacts, That papists who shall conform to the protestant religion, take the oaths, and subscribe to the declaration of 30 *C. 2.* in the Chancery, King's Bench, or quarter-sessions, (to be there recorded) shall have their

Conforming required by 11 *G. 2.*

What is required after having conformed.

Husband not chargeable for the wife.

their estates freed of the disabilities incurred before such conforming. *f. 1, 2, 3, 4.*

But by 3 *Jac. c. 4. f. 2, 3.* A recusant convicted, who shall have conformed, shall at least once a year receive the sacrament in the parish church, or forfeit for the first year 20*l*; for the second 40*l*; and for every year after 60*l*; half to the king, and half to him who shall sue in the courts at *Westminster*, or at the assizes or sessions.

But the husband shall not be chargeable with a penalty for the offence of the wife in not receiving the sacrament; nor shall the wife be chargeable for not receiving the sacrament during her marriage. *Id. f. 40.*

At the sessions where an indictment for such an offence is taken, the justices may make proclamation, by which it shall be commanded that the body of the offender shall be rendered to the sheriff, bailiff, or gaoler, before the next sessions; and, if he shall not appear of record next sessions, then, upon such default recorded, he shall stand convicted. *Id. f. 7.*

Further provisions against papists were made by the 11 & 12 *W. c. 4.* viz. It enacted that, 1. If any person should apprehend a popish bishop, priest, or jesuit, and prosecute him to conviction for saying mass, or executing any other part of the function of a popish bishop or priest, he should receive 100*l*. reward of the sheriff. 2. If any popish bishop, priest, or jesuit, should say mass, or exercise any part of the function of a popish bishop or priest (except in the houses of foreign ministers); or if any papist should keep a school, or take upon himself the education or government or boarding of youth, he should be adjudged to perpetual imprisonment. 3. If any person professing the popish religion shall not, within six months after he shall be eighteen years of age, take the oaths of allegiance and supremacy, and subscribe the declaration of the 30 *C. 2*, in the Chancery, King's Bench, or quarter-sessions, he shall, (in respect of himself, but not of his heirs) be incapable of inheriting or taking any lands, by descent, devise, or limitation: but the next of kin, being a protestant, shall have the same. 4. Every papist shall be disabled to purchase any lands, or profits out of the same, in his own name, or in that of any other to his use, or in trust for him; but the same shall be void.

But a relaxation of the severities against the Roman catholics has commenced; for, by the 18 *G. 3. c. 60*, all these clauses are repealed: provided that nothing in the said last mentioned act shall extend to any person but such as shall, within six calendar months after the passing of the act,

or of the accruing of his title, being of the age of twenty-one years, or if of unsound mind, or in prison, or beyond the seas, then within six months after such disability shall be removed, take and subscribe an oath in the words following :

“ I *A. B.* do sincerely promise and swear, That I will
 “ be faithful and bear true allegiance to his majesty king
 “ *George* the Third, and him will defend, to the utmost of
 “ my power, against all conspiracies and attempts whatever
 “ that shall be made against his person, crown, or dignity.
 “ And I will do my utmost endeavour to disclose and make
 “ known to his majesty, his heirs and successors, all trea-
 “ sons and traitorous conspiracies which may be formed
 “ against him or them. And I do faithfully promise to
 “ maintain, support and defend, to the utmost of my power,
 “ the succession of the crown in his majesty's family, against
 “ any person or persons whatsoever; hereby utterly re-
 “ nouncing and abjuring any obedience or allegiance unto
 “ the person taking upon himself the style and title of *Prince*
 “ of *Wales*, in the lifetime of his father, and who, since his
 “ death, is said to have assumed the style and title of *King of*
 “ *Great Britain*, by the name of *Charles the Third*, and to
 “ any other person claiming or pretending a right to the
 “ crown of these realms. And I do swear, that I do reject
 “ and detest, as an unchristian and impious position, that it
 “ is lawful to murder or destroy any person or persons what-
 “ soever, for or under pretence of their being hereticks; and
 “ also that unchristian and impious principle, That no faith
 “ is to be kept with hereticks. I further declare, that it is
 “ no article of my faith, and that I do renounce, reject, and
 “ abjure, the opinion, That princes excommunicated by the
 “ pope and council, or by any authority of the see of *Rome*,
 “ or by any authority whatsoever, may be deposed or mur-
 “ dered by their subjects, or any person whatsoever. And
 “ I do declare, that I do not believe that the pope of *Rome*,
 “ or any other foreign prince, prelate, state, or potentate,
 “ hath, or ought to have, any temporal or civil jurisdiction,
 “ power, superiority, or pre-eminence, directly or indirectly,
 “ within this realm. And I do solemnly, in the presence
 “ of God, profess, testify, and declare, That I do make this
 “ declaration, and every part thereof, in the plain or ordi-
 “ nary sense of the words of this oath; without any evasion,
 “ equivocation, or mental reservation whatever, and with-
 “ out any dispensation already granted by the pope, or any
 “ authority from the see of *Rome*, or any person whatever;
 “ and without thinking that I am or can be acquitted be-
 “ fore

Oath to be
 taken by papists
 to be entitled to
 the benefits of
 the 18 G. 3.
 c. 60.

“ fore God or man, or absolved of this declaration, or any
 “ part thereof, although the pope, or any other persons or
 “ authority whatsoever, shall dispense with or annul the same,
 “ or declare that it was null or void.”

Which oath shall be competent to the courts at *Westminster*, or any general or quarter-sessions to administer: of which a register shall be kept, as for the oaths required from persons qualifying for offices.—And provided also, that nothing herein shall extend to any popish bishop, priest, jesuit, or schoolmaster, who shall not have taken and subscribed the above oath, before he shall have been apprehended, or any prosecution commenced against him,

Posse Comitatus. See ARREST.

Post Horses, duty on. See HORSES.

Post Horses, farming of. See HORSES.

Post Letters. See LETTERS.

Post-Office.

BY the 9 *Ann. c. 10, s. 41*, No person shall be capable of exercising any employment in or relating to the Post-office, or any branch thereof, or be concerned in receiving, sorting, or delivering of letters, before he shall have taken the following oath, before a justice of the peace where he resides:

Oath of the post
 master and
 others concern-
 ed in the office.

“ I *A. B.* do swear, that I will not wittingly, willingly,
 “ or knowingly open, detain, or delay, or cause, procure,
 “ permit, or suffer to be opened, detained, or delayed, any
 “ letter or letters, packet or packets, which shall come into
 “ my hands, power, or custody, by reason of my employ-
 “ ment in or relating to the Post-office; except by the
 “ consent of the person or persons to whom the same is or
 “ shall be directed, or by an express warrant in writing,
 “ under the hand of one of the principal secretaries of state
 “ for that purpose; or except in such cases where the party
 “ or parties to whom such letter or letters, packet or pack-
 “ ets, shall be directed, or who is or are chargeable with
 “ the payment of the port or ports thereof, shall refuse or
 “ neglect to pay the same, and except such letters or pack-
 “ ets as shall be returned for want of true directions, or
 “ when

"when the party or parties to whom the same is or shall be directed, cannot be found: and that I will not any way embezzle any such letter or letters, packet or packets, as aforefaid."

And any person who shall act contrary to such oath, shall forfeit 20*l.* and his office. *Id.*

Persons employed to measure the post-roads, shall also be sworn to perform the same according to the best of their skill and judgment, before a justice, who shall make a certificate thereof in writing, to be entered in the general post-office without fee. 9 *Ann.* c. 10. *f.* 12. 5 *Geo.* 3. c. 25. *f.* 9, 10. Measurers oath.

The several rates of passage are regulated by the 24 *Geo.* 3. c. 37. *sess.* 2. *f.* 1, as follow: Rates of the postage.

For every single letter, not exceeding one whole post-stage from the office where it was put in, 2*d*; double letter, 4*d*; treble, 6*d*; an ounce, 8*d*; and in that proportion. Not exceeding one stage, 2*d*.

Id. More than one post-stage, and not exceeding two, a single letter, 3*d*; double, 6*d*; treble, 9*d*; an ounce, 1*s*; and in proportion. *Id.* Not exceeding two, 3*d*.

More than two post-stages, and not exceeding eighty miles from the general post-office, a single letter, 4*d*; double, 8*d*; treble, 1*s*; an ounce, 1*s.* 4*d.* *Id.* Not exceeding 80 miles, 4*d*.

More than 80 miles, and not exceeding 150 miles, a single letter, 5*d*; double, 10*d*; treble, 1*s.* 3*d*; an ounce, 1*s.* 8*d.* *Id.* From 80 to 150 miles, 5*d*.

More than 150 miles, a single letter, 6*d*; double, 1*s*; treble, 1*s.* 6*d*; an ounce, 2*s*; and so in proportion. *Id.* More than 150 miles, 6*d*.

And no letter or packet under an ounce, shall be rated higher than a treble letter; if one ounce, to be rated as four single letters; and so in proportion above an ounce, every quarter of an ounce to be reckoned as a single letter. Under an ounce not higher than a treble letter, an ounce as four letters.

Id. 3. And by the 26 *G.* 2. c. 13. *f.* 6, Writs or other proceedings at law, inclosed, or written on the same piece of paper with a letter, shall be rated and pay as so many distinct letters. Law proceedings.

Also bills of exchange, written on the same piece of paper with a letter, and distinct letters to several persons, written on the same piece of paper, shall pay as so many separate and distinct letters. 6 *G.* 2. c. 21. *f.* 51. Bills of exchange.

And patterns or samples of goods, or pieces of any kind, inclosed in a letter, or affixed to it, if under an ounce weight, shall pay as a double letter. 26 *G.* 2. c. 13. *f.* 7. Patterns or samples inclosed.

But

Merchants' accounts.

But merchants' accounts not exceeding one sheet, bills of exchange, invoices, bills of lading sent or brought over sea, (6 G. c. 21. s. 52.) shall be allowed without rate in the price of the letters. 9 Ann. c. 10. s. 13.

By several statutes, rates are appointed for letters to and from foreign parts, according to the distance and difficulty of conveyance.

Respecting foreign letters.

And by the 5 G. 3. c. 25. s. 3, 4, All masters of vessels bringing letters from abroad, shall deliver them (except in case of quarantine) at the post-office, before they break bulk; and the post-master shall receive 1d. extraordinary for each letter.

Letters or packets suspected to contain prohibited goods may be cut open in the presence of a magistrate.

And that prohibited goods may not be imported in letters or packets, the officer employed at the post-office where any foreign letter or packet containing any inclosure shall be received, may carry it before a justice for the county, or magistrate for the town in which such office is situate, and, upon oath that he suspects it to contain goods prohibited to be imported, or on which a duty is payable on importation; he shall, in the presence of such magistrate, cut open a slit in such letter or packet not exceeding two inches in length; and, if it shall appear to the magistrate that any such goods are contained therein, he shall open it, and, in the presence of such officer, destroy such goods, and inclose such letter or packet in a cover, in which shall be written an attestation signed by him, of the name of the officer who brought it, the time when, the quantity and description of goods found therein, and that they were destroyed; which cover shall be sealed and forwarded to the commissioners of the customs, who, on receipt thereof, shall pay to the said officer any sum not exceeding 5l. nor less than 10s. 24 G. 3. c. 37. s. 2. s. 4.

How to act when no such goods are found.

And if no such goods shall be found in such letter or packet, such magistrate shall inclose it in a cover, and shall also send therein an attestation signed by him, that such opening was made in his presence, and shall deliver the same sealed up to the said officer, to be forwarded by the ordinary course, And no additional postage shall be charged in consequence of such proceeding. Same Stat. s. 5.

Post-masters not to make an extra charge for delivering letters.

Post-masters are not to charge for delivering letters: as held by lord Mansfield, in the case of *Barnes v. Foley*, H. 8 G. 3, brought by an inhabitant of Bath against the post-master, who demanded and received of him an halfpenny a letter more than the settled rate of postage.

And,

And, moreover, they are obliged to deliver them. In the case of *Stoek v. Harris*, post-master of Gloucester, H. 11 G. 3. The question reserved for the opinion of the court was, Whether the post-master was obliged to deliver letters to the plaintiff at his place of abode, for the *postage only*? And the court were unanimously of opinion that he was obliged so to do. And lord Mansfield observed, that the inconvenience of the inhabitants sending for their letters to the post-office might be very great. How, added he, should people know of their letters? Are they to come or send to the post-office, every post-day, to enquire after the chance of a letter? This would be exceedingly inconvenient to every body; and would be particularly hard upon such inhabitants as seldom receive any letters by the post.

Post-masters are obliged to deliver letters.

And in the case of *Rowning and Goodchild*, in the Common Pleas, T. 13 G. 3, The question submitted to the opinion of the court was, Whether the deputy post-master of Ipswich was obliged to deliver letters at the houses of persons living in Ipswich, on paying the *legal postage only*? After some argument and consideration, it was unanimously holden that he was: Lord chief justice De Grey observing, that it had been the practice for many years to deliver letters at the houses of persons residing in London, York, Bristol, and many other towns, on paying the legal postage only. And as there is the same reason for doing it in all other post-towns, the law ought to be the same in all. *Blackst. Rep.* 906.

This doctrine established by a decision in the Common Pleas.

And when this point came on again, in the case of *Smith and Dennison*, in the King's Bench, M. 14 G. 3, in an action against the post-master of Hungerford, lord Mansfield mentioned the case of *Rowning and Goodchild*, in the Common Pleas, as decisive: and by the court unanimously, judgment was given against the post-master. *Lofft*, 753.

A similar decision.

By the 9 Ann. c. 10. s. 17, 19, None but the post-master shall carry letters; on pain of 5*l.* for every offence, and 100*l.* a week besides; half to the king, and half (with full costs) to him who shall sue in any court of record.

Post-master only to carry letters.

Except in the two universities; to and from which letters may be sent as heretofore. *Id.* s. 32.

Exceptions.

And except letters carried *gratis* by carriers or ship-masters with goods, instruments out of any court, and letters sent by friends in their journey, or by a special messenger. *Id.* s. 2.

The 24 G. 3. c. 37. sess. 2. s. 7, enacts, That no letters or packets shall be exempted from postage; except such as shall

Exemptions from postage.

shall

Regulations for
franking letters.

shall be sent from or to the king ; and such as shall be sent during the sitting of parliament, or within forty days before or after any summons or prorogation ; and whereon the whole superscription shall be of the hand-writing of the member directing the same, and shall have his name indorsed thereon, together with the name of the post-town from which the same is intended to be sent, and the day, month, and year, when put into the office (the day of the month to be in words at length), and the same shall be put into the office on the day of the date put upon such letter.

Nor shall any letter to any member of either house of parliament be exempted, unless directed to such member, at the place where he shall actually be at the time of the delivery thereof, or at his usual place of residence in *London*, or at the house of parliament, or the lobby of the house of which he is a member. *Id.*

Or to the officers of the treasury, admiralty, war-office, general post-office, secretaries of state, paymaster-general of the forces, clerk of the parliaments, clerk of the house of commons ; or upon his majesty's service, indorsed by the proper officer. 4 G. 3. c. 24. *f.* 1, 4. 5 G. 3. c. 25.

Votes and
news-papers.

And by the 5 G. 3. c. 25, This shall not extend to printed votes or proceedings in parliament, or printed newspapers, sent without covers, or in covers open at the sides, signed on the outside by a member of parliament, or directed to any member at any place whereof he shall have given notice to the postmaster-general.

And clerks in the offices of the secretaries of state and post-office, being licensed so to do by the secretaries or postmaster-general respectively, may continue to frank votes and news-papers as heretofore, provided they are sent without covers, or in covers open at the sides. *Id.* *f.* 6.

But if any paper or other thing be inclosed in such printed paper, or if any writing be thereon, except the superscription ; the whole shall be charged with postage. *f.* 7.

Forging franks,
transportation.

Any person who shall counterfeit the hand-writing of any person in the superscription, with intent to avoid the payment of postage ; or shall alter, or cause to be altered, the date upon such superscription, or write or send any letter the cover whereof shall be forged, counterfeited or altered, knowing the same, shall be guilty of felony, and transported for seven years. 4 G. 3. c. 24. *f.* 8. 24 G. 3. c. 37. *sess.* 2. *f.* 9.

Unlawfully col-
lecting letters.

By the 5 G. 3. c. 25. *f.* 21, If any post-boy shall, by himself or in combination with others, unlawfully collect any

any letters, or convey or cause them to be conveyed, he shall, on conviction, by confession, or oath of one witness before one justice, forfeit for every letter or packet 10s. to the informer; and if not paid on conviction, the offender shall be committed to the house of correction to hard labour for any time not exceeding two months, nor less than one. 5 G. 3. c. 21.

By the 5 G. 3. c. 25. s. 20, Any post-boy who shall quit the mail before his arrival at the next stage, or suffer any other person (except the person employed to guard the mail) to ride on the horse or carriage; or shall loiter on the road, or shall not in all possible cases convey the mail after the rate of six miles an hour, at least, shall, on conviction, by confession or oath of one witness, before one justice, be sent to the house of correction to hard labour, for any time not exceeding one month, nor less than fourteen days.

Post-boy quitting the mail, or loitering upon the road.

By the 9 Ann. c. 10. s. 40, A penalty of 20l. is inflicted on any person belonging to the post-office who shall open or detain any letter in its progress to delivery.

By the 5 G. 3. c. 25. s. 19, If any person intrusted to take in letters, and receive the postage thereof, shall embezzle or apply to his own use any money received by him with such letters for the postage thereof; or shall burn or otherwise destroy any letter or packet by him so received; or who, by virtue of his office, shall advance the rates upon letters or packets, and not duly account for the money received by him for such advanced postage, he shall be deemed guilty of felony.

Embezzling money received for letters post-paid, or destroying the letters.

And by the 7 G. 3. c. 50, Any person employed in any business of the post-office who shall take any letter or packet to be forwarded by the post, and receive money therewith for the postage, and shall burn or destroy any such letter or packet; or shall advance the rate of postage upon any letter or packet, and not duly account for the money by him received for such advanced postage, he shall be deemed guilty of felony. s. 3.

Receiving postage and destroying the letters.

If any person employed in the business of the post-office, shall secrete, embezzle, or destroy, any letter or packet, containing any bank-note, bank post-bill, bill of exchange, exchequer-bill, South-sea or East India bond, dividend warrant of the bank or other company, navy or victualling or transport-bill, ordnance debenture, seaman's ticket, state lottery ticket, bank receipt for payment on any loan, note or assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, *American provincial*

Stealing bills, bonds, or other securities for money out of letters.

bill of credit, goldsmith's or banker's note for payment of money, or other bond or warrant, draught, bill, or promissory note for payment of money, or shall steal and take the same out of any letter or packet, he shall be guilty of felony without benefit of clergy. 5 G. 3. c. 25. §. 17. 7 G. 3. c. 50. §. 1.

Upon the statutes of 5 G. 3. c. 25, and 7 G. 3. c. 50, *Richard Clay* was indicted at the assizes at *York*, as a servant to the post-office, for embezzling a letter containing a bill of exchange. It was objected, that, as he had not taken the oath required by 9 Ann. c. 10. §. 17 & 41, he could not be considered as a legal servant of the post-office; but the court over-ruled the objection. *Leach's Cas. in Cr. Law*, 3.

Robbing the
mail.

By the 7 G. 3. c. 50, §. 2, If any person shall rob any mail, of any letter, packet, or bag; or steal and take any letter or packet out of any mail or bag, or out of any post-office, or house or place for the receipt or delivery of letters, though the same shall not appear to be a taking from the person, or on the highway, or in a dwelling-house or out-house belonging to a dwelling-house, and though it shall not appear that any person was put in fear, he shall nevertheless be guilty of felony without benefit of clergy.

Riding post.

By the 9 Ann. c. 10. §. 14, The postmasters may charge 3d. a mile for each horse riding post, and 4d. a mile for the person riding as guide; but shall not charge for any bundle or parcel of goods not exceeding 80lb. weight, to be laid on the horse rode by the guide; and shall not be obliged to carry above that weight.

Carriages and
horses convey-
ing the mail,
exempted from
tolls.

And by the 25 G. 3. c. 57, it is enacted, That all carriages, of what description soever, or horses employed in conveying the mail, shall be exempted from the tolls at every turnpike-gate; and all gate-keepers are required to permit such carriages and horses to pass through such toll-gates without demanding any toll. §. 1.

Postmaster not
to meddle in
elections.

And by the 9 Ann. c. 10. §. 44, No postmaster shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to serve in parliament, on pain of 100l; half to the informer, and half to the poor; and likewise of being incapacitated.

Money receiv-
ed for postage,
how to be levied.

And by the same statute, §. 30, All sums which shall be due from any person for letters, or which shall be received for the carriage of letters, without answering the same to the receiver-general, shall be recovered before justices in
the

the same manner as small tithes ; and such debt shall be preferable in payment to any debt to any private person.

Potatoes, stealing of. See CABBAGES.

Pound-breach. See DISTRESS.

Powder. See STARCH.

Præmunire.

WITH respect to the etymology of the word, it proceeds from the verb *præmonere*, being barbarously turned into *præmunire*, to forewarn, or bid the offender take heed. It is either taken for a writ so called, or for the offence whereon the writ is granted.

Formerly the church of *Rome*, under pretence of her supremacy, and the dignity of *St. Peter's* chair, took upon her to bestow most of the bishoprics, abbacies, and other ecclesiastical livings of any value here in *England*, by mandates, before they were void ; pretending therein great care to see the church provided with a successor in due time. These provisions were so common, that the kings of *England*, not digesting so intolerable an encroachment, made several statutes, wherein they greatly restrained the liberty of the pope.

By the 27 *Ed. 3. c. 1*, called the statute of provisors, it is enacted, that they who shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do sue in any other court, to defeat or impeach the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them, by the sheriffs or other officers, to appear to answer in their proper persons for the contempt : and if they come not at the said day in their proper person to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, shall from that day forth be put out the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies, wheresoever they may be found, shall be taken and imprisoned, and ransomed at the king's will. And upon the same a writ shall be made, to take their bodies, and to seize their lands, goods, and possessions, into the king's hands. And if it be returned, that they be not found, they shall be put in exigent, and outlawed.

Impeaching judgments in the king's court, a præmunire.

Suing out foreign process, præmunire.

And by the 16 R. 2. c. 5, commonly called the statute of *præmunire*, and to which the several subsequent statutes refer; both those who pursue, or cause to be pursued, in the court of *Rome*, or elsewhere, any processes or instruments, or other things whatsoever, which touch the king, against him, his crown and regality, or his realm; and also those who shall bring, receive, notify, or execute them, and their fautors and abettors, shall be *out of the king's protection*, and their lands and tenements, goods and chattels, forfeit to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or process shall be made against them by *præmunire facias*, in manner as it is ordained in other statutes of provisors.

And the two statutes above recited contain the pains and penalties of what is called a *præmunire*. They were principally intended to oppose the papal encroachments in this realm; but the penalties thereof, by several subsequent statutes, are extended to other cases which have no relation to popery.

Persons guilty of a præmunire were formerly odious in the extreme.

Shall be out of the king's protection] This offence was formerly so odious, that a man attainted of it might have been slain by any one, without danger of law; because it was provided by law, that a man might do to him as the king's enemy, and a man may lawfully kill an enemy: it is therefore enacted, by the 5 *Eliz. c. 1*, that it shall not be lawful for any one to slay a person attaint in or upon a *præmunire*. 1 *Inst.* 130.

They are incapable of bringing an action.

But he is so far out of the king's protection, that he is rendered incapable of bringing an action for any injury whatsoever. And no one, knowing him guilty, can with safety give him aid, comfort, or relief. 1 *Inst.* 129, 130. 1 *Haw.* 55.

It is the better opinion, however, that he has a right to demand surety of the peace, though some have inclined to think otherwise. *Lamb.* 80. *Dalt.* 272. 1 *Haw.* 126.

Lands and tenements during life.

And though the statute enacts, That his lands and tenements shall be forfeited; yet it must be understood of such an estate as he may lawfully forfeit, and that during his own life. A tenant in tail shall only forfeit lands during life. 1 *Inst.* 130.

Works no corruption of blood.

Attainder in *præmunire* works no corruption of blood. 1 *Inst.* 391.

It has been adjudged, that a pardon of all misprisions, trespasses, offences, and contempts, will pardon a *præmunire*. *Cro. Jac.* 336. 2 *Bulst.* 299.

But

But, upon an indictment of *præmunire*, a peer of the realm shall not be tried by his peers. 12 Co. 92. Lord Vaux's Case.

Though *præmunire* is not within the letter of the commission of the peace; yet, as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or on the complaint of others, cause any person to be apprehended for such offence; and he may take the examination of the person so apprehended, and the information of all who can give material information against him, and put the same in writing, and bind over the witnesses to the King's-Bench or gaol-delivery; and certify his proceedings to the court to which he shall bind over such informers. 2 Haw. 39. Hale's Pl. 168.

Power of justices of the peace in cases of *præmunire*.

Presentment.

A Presentment is what the grand jury find and present to the court, of an offence inquirable in the court whereunto it is presented, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment. There are also presentments of justices of the peace, surveyors of the highways, churchwardens, and constables; which see under their respective titles.

Presumptive Evidence. See EVIDENCE.

Principal. See ACCESSARY.

Printing. See BOOKS.

Prison and Prisoner. See GAOL.

Prison-breaking.

THE offence of breaking a gaol or prison, by the common law, was no less than felony; whether the party were committed in a criminal or civil case, or whether he were actually within the walls of the prison, or only in the stocks, or in the custody of any person who had lawfully arrested him; or whether he were in the king's prison, or in

Breaking prison, at common law, was felony.

one belonging to a lord of franchise. 2 *Inst.* 589. *Staundf. P. C.* 31. *Cro. Car.* 210.

Prison-breaking
by the statute of
1 Ed. 2.

But by the 1 *Ed.* 2. *st.* 2, the severity of the law is moderated. It enacts, That concerning prisoners which break prison, our lord the king willeth and commandeth, that none from henceforth that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convicted thereupon according to the law and custom of the realm; albeit in times past it hath been used otherwise.

There must be
actual breaking.

Prisoners which break prison.] That there must be an actual breaking, for the words *felonice fregit prisonam*, which are necessary in every indictment for this offence, cannot be satisfied without some actual force or violence; and therefore if the prisoner, without the use of any violent means, go out of the prison doors, which he finds open by the negligence or consent of the gaoler, or if he escape through a breach made by others without his privity, he is guilty of a misdemeanor only, and not of felony. 2 *Inst.* 589. *Hale's Pl. C.* 31. *Staundf. Pl. C.* 31.

What is a
prison.

It seems clear, that any place whatsoever, wherein a person under a lawful arrest, for a supposed crime, is restrained of his liberty, is properly a prison within this statute; for imprisonment is nothing but a restraint of liberty. 2 *Haw.* 124.

Setting fire to a
prison.

Setting fire to a prison is death without benefit of clergy, as adjudged in the case of *K. v. Donnavan*. At *Serjeant's Inn* hall, on the first day of *Easter* term 1770, Mr. justice *Gould* submitted the following case to the consideration of the judges: at the last *Lent* assizes for *Lancaster*, *James Donnavan* was tried and found guilty of the crime of *arson*. The first count in the indictment charged him with maliciously setting on fire, about the hour of eleven at night, "a house of the mayor, bailiffs, and burgesses of the town of *Liverpool*, called the common gaol." The second count described it to be, "a house of the mayor and bailiffs, by name called the common gaol." The third count described it to be the "the house of *Hannah Kerby*." A fourth count described it to be "the house of *Richard Rigby*." But it was not added in either of the last counts, "called a common gaol." The prisoner was confined for debt, and on the 28th of *January* 1770, he voluntarily set fire to his box, which was a little apartment in the prison; and the whole gaol would unavoidably have been burnt down, if timely assistance had not extinguished the flames. The

The gaol belonged to the corporation of *Liverpool*; and was always used as the place of confinement both for their criminals and debtors. *Richard Rigby*, one of the serjeants of the town, was the keeper of this gaol; and there is a dwelling-house adjoining to it for him to live in, and wherein he permitted his mother-in-law, *Hannah Kerby*, to dwell, who kept it as a public-house. A wall separates the prison from his house; and the entrance into the prison is from the dwelling-house by a door through the wall, which door is locked every night. Nobody inhabits in the prison itself but the prisoners. If any prisoner is able to pay for a bed, *Mrs. Kerby* supplies it, either in the gaol or the house; and the rate of payment is the same, whether it is in the one place or the other: the statute of 9 G. 1. c. 22. enacts, That if any person or persons shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood, &c. they shall suffer death without benefit of clergy. And the question is, Whether this prison is to be considered as a house within the meaning of the legislature? The judges concurred with Mr. justice *Gould*, that this was fully within the meaning of the act; the dwelling-house being to be considered as part of the prison, and the prison as the house of the corporation. *Leach's Cas. in Cr. Law*, 67.

But if the prison be fired without the privity of the prisoner, he may lawfully break to save his life. *Hale's Pl*, 108.

No breach of prison will amount to felony unless the prisoner escape. 2 *Haw*. 125.

Breaking prison without escaping.

None that breaketh prison shall have judgment of life or member] That is, shall be guilty of felony. Still, however, he is punishable as for a high misprison, by fine and imprisonment; for though the statute enacts that such offences shall not be punished as capital ones, it never can intend that they shall not be punished at all. 2 *Haw*. 128.

And the statute of 3 *Ed*. 1. c. 15, enacts, That those who have broken prison are not bailable by justices of the peace; and that for two reasons. 1. Because it carries a presumption of guilt. And, 2. Because it is a superadded offence to the former for which they stood committed. 2 *H. H*, 133.

Except the cause for which he was taken and imprisoned did require such judgment] This is to be intended of a lawful cause; and therefore false imprisonment is not within this act. 2 *Inst*. 590.

If the party who breaks from prison were taken on a *capias* on an indictment or appeal, it is not material whether

Prisoner taken by a *capias*.

that of which he is accused were in truth committed or not; for there is an accusation against him on record, which makes the commitment lawful be he ever so innocent. 2 *Inst.* 590. *Hale's Pl.* 109.

Prisoner committed by a mittimus.

But when it does not appear by matter of record, as when the felony is done, and the offender by a lawful *mittimus* is committed to gaol for it; yet if no felony be done at all, and yet he is committed to prison for a supposed felony, and break prison; this is no felony, for there is no cause. 2 *Inst.* 590.

Cause to be expressed in the mittimus.

Though it is not required that the cause should be expressed in the *mittimus* so certainly as in an indictment, yet it must be set forth with such a convenient certainty as that it may appear judicially that the offence requires such judgment; as not for felony generally, but for felony in stealing such a horse, and the like. 2 *Inst.* 591.

Indictment.

It is not sufficient to indict a man generally for having feloniously broken prison; but the case must be set forth specially, that he was lawfully in prison for such a capital offence. *Hale's Pl.* 109. 2 *Inst.* 591.

Where the prisoner is charged with petit larceny, &c.

But if the party be only arrested for, and in his *mittimus* be charged with a crime which does not require judgment of life or member, as petit-larceny, or homicide by self-defence or by misadventure, and the offence be in fact no greater than the *mittimus* supposes it to be; it is clear, from the express words of the statute, that the breaking of the prison cannot amount to felony. 2 *Haw.* 126.

Subsequent statutes making an offence felony.

But if a subsequent statute shall make an offence felony, and the offender shall be committed thereupon; if he breaks prison, it is felony. For, as all breaches of prison were felonies by the common law, which is restrained by this statute of 1 *Ed.* 2. in respect only of imprisonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the statute as if it had always been so. *Hale's Pl.* 108. 2 *Haw.* 126.

A person cleared of the felony, cannot be indicted for prison-breaking.

But if the party is first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being clear that he was not guilty of the felony, he is in law as a person never committed for felony, and therefore his breach of prison is no felony. 1 *H. H.* 612.

The gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it. 1 *H. H.* 601.

For further information on this head the reader is referred to the title ESCAPE.

Privilege.

PRIVILEGE is an exemption from some duty, burthen, or attendance, to which certain persons are entitled, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and attention ; and that therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. 4 *Bac. Abr.* 215.

Privilege of Parliament. See **PARLIAMENT**.

Privilege of an Attorney. See **ATTORNEY, &c.**

Process.

PROCESS is the manner of proceeding in every case, being the writs and precepts which go forth upon the original upon every action, being either original or judicial. *Britt.* 138.

By the commission of the peace, the justices in sessions have power to make and continue processes upon indictments, against the persons indicted, until they are taken, surrender themselves, or are outlawed. Justices may make and continue processes.

By the 1 *Ed.* 4. c. 2, Indictments and presentments taken in the sheriff's tourn, shall be delivered to the next sessions, who may award process thereupon as if they had been taken before themselves. Process on indictments taken in the tourn.

And the law, in several cases, in express terms, directs process to be made by justices out of sessions ; and in other cases by necessary implication : as where a statute gives power to justices out of sessions to enquire, hear, and determine, they may there make process to cause the party to come and answer ; otherwise they cannot proceed to hear and determine ; and this may be either before or after presentment or indictment, as the several statutes require. Before presentment or indictment it is called a *warrant* ; after presentment or indictment it is properly called *process*. *Dalt.* c. 193. Process by justices out of sessions.

The process ought to be in the name of the king ; and, if it issue from the King's-Bench, it ought to be under the Process should be in the king's name.
teste

teste of the chief-justice. If it issue from any other court, there seems to be the same reason for its being under the teste of the first in the commission. 2 Haw. 283.

Upon an indictment in sessions (for a misdemeanor, not being a felony) there must be fifteen days between the teste and return of the *venire*; but, if the entry be by the consent of parties, the *venire* may be determinable immediate, and the trial be the same day. 3 Salk. 371.

Process upon
offences under
felony.

The ordinary processes upon all indictments of trespass against the peace, or other offences against penal statutes, not being felony, or a greater offence, are as follow; First, if the offender be absent, a *venire facias*, which is but in the nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. 2 Haw. 283.

If it shall appear by the return of such *venire*, that the party has lands in the county, whereby he may be distrained, the *distress infinite* shall be awarded from time to time, till he shall appear; and by force thereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire*, then three *capias*'s, that is, a *capias*, *alias*, and *pluries*, shall issue. 2 Haw. 283.

Where the inhabitants of a parish are indicted or presented, the process is first a *venire*, then a *distringas*, Crown Cir. 21.

Process for
felony.

Process on an indictment or appeal of death, is one *capias*, and then an *exigent*: but in the case of any other felony, then by the 25 Ed. 3. c. 14, two *capias*'s, and then an *exigent*. Hales's Pl. 209. 2 Haw. 303. Crown Cir. 31.

By the 21 Jac. c. 4, Restraining all popular actions on penal statutes to their proper counties, the like process in every popular action, bill, plaint, suit, or information, on a penal statute, before the quarter-sessions (or higher courts), shall be awarded as in an action of trespass *vi & armis* at the common law.

And consequently the process in all such suits must be by attachment or *pone per vadios*; and after by distress infinite, if by the return the party appears to be sufficient, otherwise by *capias*. 2 Haw. 284.

Process on an
escape.

Where a defendant shall appear to an indictment of felony, and afterwards, before issue joined, make an escape, either from bail or from prison; the common *capias*, *alias*, and *pluries*, shall be awarded against him, unless there had been an *exigent* before, and then a new *exigent* shall be awarded. 2 Haw. 285.

The

The *exigent* shall not be awarded against accessaries, till the principal shall be attained. 3 Ed. 1. c. 14. 2 How. accessaries. 306.

The 8 H. 6. c. 10, enacts, That on indictments for treason, felony, or trespass, against persons dwelling in other counties than where the indictment is taken, before any *exigent* awarded, presently after the first writ of *capias* awarded, and returned, another writ of *capias* shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed to be conversant by the same indictment, returnable before the same justices or others before whom he is indicted, at a certain day, containing the space of three months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from six weeks to six weeks, he shall have four months, until the return of the same writ: by which writ of second *capias* it shall be commanded to the same sheriff, to take the person indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he who is so indicted, shall appear before the said justices or others, in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of *capias*, to answer to the king of the felony, treason, or trespass, whereof he is so indicted: after which second writ of *capias* so served and returned, if he who is so indicted come not at the day of the same writ of *capias* returned, the *exigent* shall be awarded. And every *exigent* and outlawry otherwise awarded or pronounced shall be void.

And if any such indictment shall be removed by *certiorari*, then before the *exigent* awarded, presently after such first *capias* returned, another writ of *capias* shall be directed as before, returnable before the king in his bench.

But this shall not extend to indictments taken in the county of *Chester*.

Also if any person be indicted of felony or treason, and at the time of the same felony or treason supposed was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall have an action upon his case, against the procurer of such indictment; and if such procurer

curer be attainted thereof, the plaintiff shall recover treble damages.

Which seems to be on account of the distance at which he is supposed to live from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of *B*, and late of *C*, there requires no *capias* to the sheriff of the county where *C* lies, because it appears that the defendant is at present conversant at *B*. But if a defendant be named of no certain place at present, but only late of *B*, and late of *C*, and late of *D*, being all in counties different from that wherein the prosecution is commenced, a *capias* shall go to the sheriff of each of those counties. 2 *Haw.* 306.

Otherwise awarded or pronounced shall be void] Not utterly void, but only voidable by writ of error. *Id.*

The county of Chester] But it may be awarded into the counties palatine of *Lancaster* and *Durham*; and it seems that it shall be directed to, and returned by the chancellor of *Lancaster*, or bishop of *Durham*; and it has been said, that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 *Haw.* 305. *Hale's Pl.* 209, 210.

And it has been held, that, by the equity of this statute, if a person, indicted in one county is imprisoned in another, the justices may award an *habeas corpus* to remove him before themselves. *Lamb.* 526.

To be executed
by the sheriff.

With respect to the execution of the process, it is laid down as a general rule, that wherever the king is a party to the suit (as he certainly is to all informations and indictments) the process ought to be executed by the sheriff himself, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise or in the county at large; for the king's prerogative shall be preferred to any franchise: but it is said, that this is to be intended only where in the grant of the franchise no mention is made of causes to which the king is a party. 2 *Haw.* 284.

Process on a
Sunday.

But by the 29 *C. 2. c. 7. s. 6*, No person, on the Lord's day, shall serve, or cause to be served, any writ, process, or warrant, order, or judgment (except in cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, as if he had done it without

without any writ, process, warrant, order, or judgment at all.

If the party be in an house, the doors being shut, and the sheriff (having given notice of his process) demand admittance, and the doors are not opened, he may break open the doors and enter to take the offender. 2 H. H. 202. See title ARREST.

When doors may be broke open.

It seems agreed, that every suit, whether civil or criminal, and every process in such suit against jurors, ought to be properly continued from day to day, from its commencement to its conclusion, without any gap or chasm; for the suffering any such gap or chasm is properly called a *discontinuance*; and the continuing the suit by improper process (as by a *capias* instead of a *disstringas*), or by giving the parties an illegal day, is properly called a *miscontinuance*; and if the justices, before whom the matter is depending, do not come on the day to which it is continued, it is said to be *put without day*, and cannot be revived without a re-summmons or re-attachment. 2 Haw. 298, 300.

A discontinuance of process.

Process may be discontinued several ways. As, 1. Where the second is not tested on the very same day on which the first is returnable. 2. Where there is a sessions intervening between the teste and the return of a *capias*, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an *exigent*, that it is not returnable the next sessions, because it must allow time for five counties to be holden between its teste and return. 3. Where after issue or demurrer, the court gives the party a day to a distant sessions, without making any continuance to that immediately following. 4. Where the sessions to which the suit is continued is adjourned, and the suit is not adjourned accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the roll, or by process, by a name or addition variant from those in the original, though only in one letter. 6. Where a *venire* or *disstringas* are issued, without any award on the roll to warrant them. 2 Haw. 298, 299.

Several ways of discontinuing process.

It seems generally admitted, That a discontinuance by suffering a total chasm in the proceedings, whether on the roll, or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance or pleading over: but it is holden by the greater number of authorities, that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be ever so erroneous

erroneous or defective, so that it never were discontinued, for the end of process is to compel an appearance; and the end being answered, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. 2 Haw. 300.

Process stayed by putting in bail.

The processes (as well of *capias* as of outlawry) may be stayed by a *superfedeas* issuing from other justices (out of sessions) testifying that the party has come before them, and found sureties for his appearance to answer to the indictment, or to pay his fine. *Dalt. c. 193.*

One justice may bail a person for less than felony.

And it seems that even any one justice may bail persons indicted at the sessions, for any offence under the degree of felony; because the statutes relating specially to the power of justices in granting bail, do not in this case seem to take away the power, which one justice had before the making of such statutes. 2 Haw. 103.

Signification of the word outlaw.

The term *outlaw* (*utlagatus*) is not immediately derived from the *Latin lex*, but comes to us through the *Saxon laga* which signifies *law*: and a person outlawed signifies one who is out of the protection of the king, and out of the aid of the law.

Process of outlawry.

Judgment of outlawry is given by the coroner, at the fifth county-court, upon the party's not appearing to the *exigent* (which is a writ commanding the sheriff to cause the defendant (*exegi*) to be demanded from county-court to county-court, until he be outlawed). And such judgment is entered thus, *Therefore by the judgment of the coroners of our lord the king of the county aforesaid, he is outlawed.* 2 Haw. 446.

A woman outlawed.

And a man outlawed is called outlawed, but a woman outlawed is called waived, and not *utlagata*; because women are not sworn in leets or tornes, as men which are at the age of twelve or more are; and therefore men may be called *utlagati*, that is, *extra legem positi*, but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, because they were not sworn to the law: wherein it is to be noted, that anciently a man was not said to be within the law, that was not sworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inst.* 122.

And hence it is, that a man under the age of twelve years, cannot be outlawed. *Id.*

For what process of outlawry will lie.

Process of outlawry lies in all indictments of treason or felony, on all returns of rescous, and on all indictments of trespass.

trespass with force and arms ; and it seems probable that it lies on an indictment of conspiracy or deceit, or any other crime of a higher nature than a trespass with force and arms ; but not on any indictment for a crime of an inferior nature. And it seems agreed that it does not lie on any action on a statute, unless it be given by such statute expressly, as in the case of a *præmunire* ; or impliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on the 8 *H. 6. c. 9* ; because the statute expressly gives a recovery by such a writ, and such process lies in it by the common law. 2 *Haw. 302, 303.*

By the 31 *Eliz. c. 3*, it is enacted, That in every action personal, wherein an *exigent* shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court, having day of teste and return as the writ of *exigent* shall have, directed and delivered of record to the sheriff where the defendant dwells ; which writ of proclamation shall contain the effect of the same action : and that the sheriff of the county, to whom any such writ of proclamation shall be directed, shall make three proclamations in this form following, and not otherwise ; that is to say, One of the same proclamations in the same county-court, and one other of the same proclamations to be made at the general quarter-sessions in those parts where the party, defendant at the time of the *exigent* awarded, shall be dwelling ; and one other of the same proclamations to be made one month at the least before the *quinto exactus* by virtue of the said writ of *exigent*, at or near the most usual door of the church or chapel of the town or parish where the defendant shall be dwelling at the time of the *exigent* so awarded ; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish in the same county, and next adjoining to the place of the defendant's dwelling, and upon a *Sunday* immediately after divine service and sermon, if any sermon there be ; and if no sermon there be, then forthwith after divine service.

Outlawry to be proclaimed.

And by the 4 & 5 *W. c. 22. s. 4*, Upon issuing any *exigent* out of any of the king's courts, against a person for a criminal matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of the proceeding is mentioned to inhabit, according to the form of the 31 *Eliz. c. 3* ; which writ of proclamation shall be delivered to the sheriff three months before the return of the same.

If

Return of outlawry.

If there are two or more coroners in a county, one may execute the writ, as in the case of an *exigent*, but the return must be in the name of the coroners. 2 H. H. 56.

The sheriff's name and office must be subscribed to the return of the *exigent*. 2 H. H. 204.

And the return of the outlawry must be certain: it must shew where the county-court was held, and in what county; and must return the day and year of the king to every *exatus*. 2 H. H. 203.

It is said that the justices in sessions cannot issue a *capias utlagatum*, but must return the record of the outlawry into the King's-Bench, and the process of *capias utlagatum* shall issue. 2 H. H. 52.

But in T. 10 *Jac.* The court of Common Pleas was of opinion, that if a person be outlawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum*: and *Periam*, chief-baron, and all the court of Exchequer were of the same opinion; for they who have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 Co. 103.

Consequences of outlawry.

If a man be outlawed at the suit of one person, all others shall take advantage of this personal disability. 1 Inst. 128.

But such disability does not abate the writ, but only disables the plaintiff until he obtain a charter of pardon. *Id.*

Killing an outlaw.

Anciently no man could have been outlawed but for felony, the punishment whereof was death; and on this account a person outlawed was considered as a wolf, or any other noxious animal, and any one might lawfully kill him: but early in the reign of *Ed. 3.* it was resolved by the judges, to avoid the effusion of human blood, that only the sheriff, having lawful warrant, should put to death any man outlawed, though it were for felony; and if any other person did, he should suffer death, as if he had killed any other man: and so the law continues to this day. 1 Inst. 28.

Outlaw for treason, or felony.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. 2 Haw. 446.

For an inferior offence.

But the outlawry for a misdemeanor, does not inure as a conviction for the offence, as in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. *K. and Tippin.* 1 W. 2 Salk. 494.

The

The very issuing of the exigent, in case of treason or felony, gives the king the forfeiture of the goods of the party, from the time of the teste of the writ of exigent: and the forfeiture by the exigent awarded stands, though the indictment be quashed, till there be a judgment of reversal on a writ of error; because the king's title being of record, must be avoided by a record. 2 *H. H.* 204, 205. Goods forfeited from the time of issuing the exigent.

And, as the award of the exigent gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed; viz. in case of outlawry of treason his lands are forfeited to the king, of whomsoever they are held; and in case of outlawry of felony, to the lord by escheat, of whom they are immediately holden. 2. *H.* *H.* 206. Lands forfeited from the time of the outlawry.

But the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. 2. *H.* *H.* 206. But the outlawry must be first returned.

Or it must be removed by *certiorari* for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inst.* 288.

By the outlawry all *personal* chattles are vested in the king by forfeiture; but real chattels or freehold estates are not vested in the king till after inquisition found. 3 *Salk* 262. After inquisition.

If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol-delivery may award execution of such prisoner; for they are constituted to deliver the gaol. 4 *Inst.* 166. 2 *H. H.* 35. Awarding execution.

Where benefit of clergy is allowable, it shall be as much allowed to a person who is outlawed, as to a person convicted by verdict or confession. 2 *Haw.* 343. Benefit of clergy.

But a statute taking the benefit of the clergy from those who shall be found *guilty*, does not thereby take it from those who are outlawed. *Id.*

It is however enacted, by the 3 & 4 *W. c.* 9. *f.* 2, That if a person be indicted for any offence, for which, by any former statute, he is excluded from clergy on conviction; if he shall be outlawed thereupon, he shall not have his clergy.

By the words *any former statute*, it appears that this does not extend to offences made felonies by statutes subsequent to this of 3 & 4 *W. c.* 9.

A person outlawed cannot sue.
Nor be a juror.

A person outlawed cannot be a plaintiff, during the time he is outlawed, because he is out of the law. 1 *Inst.* 128.

And it seems to be a good challenge of a juror that he is outlawed, either for a criminal matter, or, as some say, in a personal action: though not a principal challenge, but only to the favour, unless the record of the outlawry be produced.

2 *Haw.* 215, 417.

But he may be a witness.

But outlawry in a *personal* action is not a good exception against a witness, as it is against a juror. 2 *Haw.* 443.

May make a will.

A person outlawed may make a will, and have executors or administrators. *Cro. El.* 575.

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. 1 *Leon.* 325.

Several ways of reversing outlawry.

Outlawry may be reversed several ways; as by procuring a *superfedeas* and delivering it to the sheriff before the *quinto exactus*, or by shewing any matter apparent on record, which makes the outlawry erroneous; as the want of an original, or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and exigent, or other process, or by a misnomer, or want of addition. 2 *Haw. c.* 50.

In what case the party must appear personally to reverse it.

And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person: and if the outlawry be reversed, he shall be put to answer the indictment. 2 *H. H.* 209.

But by the 4 & 5 *W. c.* 18, A person outlawed, except it be for treason or felony, need not appear in person to reverse an outlawry, but may appear by attorney. 2 *Salk.* 496.

For process against offenders called attachment, granted by courts of record principally for contempt; see title ATTACHMENT.

The process against *witnesses* may be seen in the title EVIDENCE.

And for the process of *jurors*, the reader is referred to the title JURORS.

Promissory Note.

Promissory notes under 20s. are void.

BY the 15 G. 3. c. 51, (which was to be in force for five years, and afterwards continued for five years further by the 17 G. 3, and both acts made perpetual by the 27 G. 3. c. 16,) All promissory or other notes, bills of exchange,

change, draughts, or undertakings in writing, being negotiable, and transferrable, for the payment of any sum or sums of money less than 20s. in the whole, shall be void: and if any person shall publish or utter any such notes, bills, draughts, or engagements, for a less sum than 20s. or on which less than 20s. shall be due, and which shall be in any wise negotiable, or shall negotiate the same; every such person shall forfeit a sum not exceeding 20l. nor less than 5l.

And the justice or justices, before whom an offender shall be convicted as aforesaid, shall cause the conviction to be made out in a summary form, as specified in the act, with many particular directions. But (probably by mistake) neither justice nor conviction is mentioned in the foregoing part of the act, nor any mode of conviction pointed out.

No method of recovering penalties.

By the 17 G. 3. c. 30, it is further enacted, That all promissory or other notes, bills of exchange or draughts or undertakings in writing, being negotiable or transferrable, for the payment of 20s. or above that sum and less than 5l. or on which 20s. or above and less than 5l. shall remain undischarged, shall specify the names and places of abode of the persons respectively to whom, or to whose order the same shall be payable; and shall bear date before or at the time of drawing or issuing thereof; and shall be made payable within twenty-one days next after the day of the date thereof, and shall not be transferrable or negotiable after the time thereby limited for payment; and every indorsement thereon shall be made before the expiration of that time, and shall bear date at or not before the time of making thereof; and shall specify the name and place of abode of the person to whom, or to whose order the money is to be paid: otherwise such note, bill, draught, or undertaking shall be void:

Promissory note, &c of 20s. or more, and less than 5l.

Which said promissory notes, bills, draughts, or undertakings, and indorsements, may be in the following, or form to that effect:

Place, day, month, and year.] Twenty-one days after date, Form of promissory note.
I promise to pay to A. B. of or his order, the sum of
for value received, by E. F.
Witness
C. D.

Indorsement *toties quoties*.

Place, day, month, year] Pay the contents to E. T. of
or his order:
Witness
G. H. A. B.

Promissory Note.

If it is upon advice, say, ——— Twenty-one days after date, pay to A. B. of ——— or his order, the sum of ——— value received, as advised by ———

C. D.

The publishing, uttering, or negotiating notes, bills of exchange, draughts, or undertakings, contrary to this act, is prohibited and restrained under the like penalties as for offences against the former act: so that the impracticability of recovering the said penalties still remained in both cases.

The defect of the former acts supplied.

In this imperfect state these statutes remained for about seven years longer; when by the 24 G. 3. c. 7. *sess* 1, a mode of conviction was pointed out before one justice, as hereafter particularly mentioned under this head.

Stamp duty on bills of exchange and notes.

The 22 G. 3. c. 33, Imposed certain stamp duties on bills of exchange and promissory notes; which being found inconvenient, the same was repealed by the 23 G. 3. c. 49, and other duties granted in lieu thereof as follows: For every piece of vellum or parchment, or sheet or piece of paper, on which any foreign or inland bill of exchange, promissory note, or other note, draught, or order, shall be ingrossed, where the sum expressed therein, or made payable thereby, shall not amount to 10*l.* shall be charged a stamp duty of 3*d.*; of 10*l.* and under 50*l.* 6*d.*; of 50*l.* or upwards, 1*s.* To be paid by the person giving such bill of exchange, promissory or other note.

Notes under 40*s.* not liable.

But by 24 G. 3. c. 7. *sess* 1. *f.* 4, notes or draughts under 40*s.* are not liable to any stamp duty.

Foreign bills.

Provided that no foreign bill of exchange, promissory or other note, draught, or order, shall be chargeable with more than 6*d.* each copy; but every duplicate and triplicate thereof shall be charged with the like duty of 6*d.*

Draughts on bankers.

And nothing herein shall extend to charge any draught or order for the payment of money upon demand, on any banker residing within ten miles of the place of abode of the drawers.

But by 24 G. 3. c. 7. *sess* 1. *f.* 3, Such exemption shall be confined to draughts or orders made payable to the bearer, and to no other notes, draughts, or orders.

Bank of England excepted conditionally.

And provided, that this shall not extend to promissory and other notes and bills issued by the governor and company of the bank of *England*, on their paying annually 12,000*l.* in lieu thereof. 23 G. 3. c. 49. *f.* 9.

And by the 24 G. 3. c. 7. *sess* 1. *f.* 8, No such bill of exchange, promissory or other note, shall be permitted to be stamped,

stamped, at any time after the same shall have been written, and signed, but upon payment of 10*l.* and the duty.

And by the same statute, *f.* 1, Any person who shall write or sign any such bill of exchange, promissory or other note, or cause the same to be written or signed, without having been duly stamped, shall forfeit 5*l.* to be recovered as penalties on other stamp-acts; or in manner hereafter mentioned. *f.* 1. Penalties.

All offences against this act, or the said act of last session of parliament, which subjects the offender to the penalty of 5*l.* may be recovered before one justice residing near the place where the offence was committed, who is required, on complaint made within one year of the time of committing such offence, to summon the party accused, and the witnesses, and on confession, or oath of one witness, to give judgment therein, and to cause such penalty to be levied by distress; and for want of sufficient distress, to commit the offender to prison for three months, unless such penalty shall be sooner paid: the penalty to be distributed half to the king, and half to him who shall sue. Persons aggrieved may appeal to the next sessions which shall happen fourteen days after such conviction, on giving reasonable notice, and also on giving security to the amount of such penalty and costs. And such justice, if he shall see cause, may mitigate such penalty, not exceeding one moiety thereof and costs, *Id. f.* 1, 9, 10, 12. How to be recovered and applied.

Witnesses not appearing having been duly summoned (and reasonable expences tendered) without sufficient cause, shall forfeit 40*s.* to be recovered in like manner. *f.* 10. Witnesses.

Prophecies.

PROPHECIES are by our statutes taken for the foretelling of things to come, in dark and ambiguous speeches, whereby great commotions have often been occasioned in this kingdom, and great attempts made by those to whom those speeches promised good success, though the words are mystically framed, and point only at the cognizances, arms, or some other quality of the parties. But these for distinction-sake, are called *fond*, *false*, and *fantastical prophecies*. *3 Inst.* 128.

The 33 *H.* 8. *c.* 14, To abolish certain foolish and superstitious notions which prevailed in the times of ignorance,

Public Worship.

norance, enacted, That any person who should set forth such false prophecies, should be guilty of felony without benefit of clergy. This statute was wholly repealed by the 1 Edw. 6. c. 12, which repealed all statutes making any offences felony from the first year of the reign of Henry 8: and the substance thereof was re-enacted, with a mitigation of the penalty, by the 3 & 4 Edw. 6. c. 15; which statute expiring, the following was enacted:

By the 5 Eliz. c. 15, If any person shall advisedly and directly advance, publish, and set forth by writing, printing, singing, or any other open speech or deed, any fond, fantastical or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances, or signets, or upon or by reason of any time, year or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, dissension, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit 10*l*. and for the second offence shall be imprisoned for life, and forfeit his goods: half to the king, and half to him who shall sue for them in any court of record.

Public Worship.

Speaking irreverently of the sacrament.

BY the 1 Ed. 6. c. 1, If any person shall speak irreverently of the sacrament of the Lord's supper, he shall suffer imprisonment, and make fine and ransom at the king's will. And three justices, (1 2.) may take information by the oaths of two witnesses; and afterwards, at the sessions, may enquire thereof by the oaths of twelve men upon indictment: and they shall at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial. But no person shall be molested, except within three months after the offence committed.

Impugners of the rites of the church.

Impugners of the book of common prayer, of the thirty-nine articles, of the rites and ceremonies of the church of England, of the episcopal government of the church, or of the form of ordering, and consecrating archbishops and bishops, shall be *ipso facto* excommunicated, and not restored but upon

upon repentance and public recantation. *Can. 4, 5, 6, 7, 8.*

For *blasphemy* and *profaneness*, denying the *Trinity*, ridiculing the *miracles*, *blaspheming* in plays and interludes; see the title **BLASPHEMY**.

Respecting *sacrilege*, quarrelling and fighting in the church or church-yard, &c. the reader is referred to the title **CHURCH**.

And with respect to the penalties for not *resorting to church*, for *harbouring recusants*, &c. see **POPERY**.

Of arresting clergymen in the church or churchyard; see **CLERGY**.

By the 22 G. 2. c. 33, All commanders, captains, and officers at sea, shall cause the publick worship of almighty God, according to the liturgy of the church of *England*, to be performed in their respective ships: and prayers and preachings by the chaplains shall be performed diligently. Public worship enjoined in the navy.

And by the 13 & 14 C. 2. c. 4, No person shall be received as a lecturer, or allowed to preach or read any lecture or sermon, without licence from the bishop, and assenting to the thirty-nine articles, and reading the common prayer before the first sermon, and on the first lecture day of every month, on pain of three months imprisonment for every offence, by two justices, on certificate from the bishop of the offence committed. *f. 19, 20, 21.* Qualification of lecturers or preachers.

Also by the 1 Mar. sess. 2. c. 3, If any person shall disturb a preacher in his sermon by word or deed, he shall be apprehended and carried before a justice, who shall commit him to safe custody, and within six days, he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he does; saving the ecclesiastical jurisdiction; and he shall not be punished both ways. Disturbance of public worship

And this statute, though made in the reign of *Mary*, extends to the divine service now established. *Gibf. 732.*

And the 1 W. c. 18. *f. 18*, enacts, That if any person willingly and of purpose, come into any church, chapel, or other congregation permitted by the act of toleration, and disturb and disturb the same, or misuse any preacher or teacher, he shall on proof before one justice, by two witnesses, find two sureties to be bound by recognizance in 50l; and in default thereof shall be committed till the next sessions, and Penalties on disturbing a preacher or teacher.

on conviction there of such offence, he shall forfeit to the king 20/.

The court of King's Bench refused to grant a *certiorari*, to remove an indictment at the sessions, for a person not behaving himself modestly and reverently at the church during divine service; which, though punishable by ecclesiastical censures, the court conceived a proper cause within cognizance of the justices of the peace. 1 *Keb.* 491. And this was before the statute of the 1 *W. c.* 18.

By the 2 and 3 *Ed. 6. c.* 1, It shall be lawful for all men, as well in churches, chapels, oratories, and other places, to use openly any psalms or prayer taken out of the bible, at any due time, not letting or omitting the service thereby.

Quakers.

HOW far they are privileged by the act of toleration, see title **DISSENTERS**.

Respecting quakers' tithes, see title **TITHES**.

Of their not serving on juries, see title **JURORS**.

See also title **OATHS**.

Quarantine. See **PLAGUE**.

Rape.

Rape, what.

RAPE is when a man has carnal knowledge of a woman by force and against her will; and *rapere, to ravish*, signifies as much as *carnaliter cognoscere*, and cannot be expressed in legal proceedings by any other words.. 2 *Inst.* 180.

Child under ten years of age.

And by the 18 *Eliz. c.* 7, If any person shall unlawfully and carnally know, and abuse any woman child, under the age of ten years, whether with her consent or against, he shall be guilty of felony without benefit of clergy.

General observations.

Rape is certainly an atrocious crime, and ought to be punished with death; but it should be remembered, that it is an accusation easily to be made, hard to be proved, and harder to be defended by the party accused, though ever so innocent: therefore a wise jury will be cautious upon trials of

of offences of this nature, and not be so much transported with indignation at the heinousness of the offence, as to be over hastily carried to the conviction of the person accused, by the confident testimony, sometimes of malicious and false witnesses. 1 *H. H.* 635, 636.

It is not a sufficient excuse in the ravisher, to prove that the woman is a common strumpet; for she is still under the protection of the law, and is not to be forced. 1 *Haw.* 108. Ravishing a common woman.

Nor is the offence of a rape mitigated, by shewing that the woman at last yielded to the violence, if such her consent was forced, by fear of death or of duress. *Id.* Consenting at last through fear.

Nor is it any excuse that she consented after the fact. 1 *Haw.* 108. Consenting after the fact.

By the 6 *R. 2. c. 6*, it is enacted, That when a woman is ravished, who afterwards consents to the ravisher, both the ravisher and ravished shall be disabled to have any inheritance, dower, or joint seoffment; but the next of blood shall enter. And the next of kin to the woman ravished may have an appeal against a ravisher, notwithstanding such consent; and the defendant shall not be received to wage battle.

Though it has been said by *Dalton*, on the authority of *Stamford*, *Britton*, and *Finch*, that if a woman conceives in consequence of the supposed rape, it is then no rape, for a woman cannot conceive unless she consents; Mr. *Hawkins* thinks this opinion is very questionable, not only because the present violence is no way extenuated by such a subsequent consent, but also because if it were necessary to shew that the woman did not conceive, the offender could not be tried till it might appear whether she did or not; and he expresses his doubts of the philosophy of this notion. *Dalt. c. 160.* 1 *Haw.* 108. Of conception in consequence of a rape.

And *L. Hale* observes, that this opinion of *Dalton* seems to be no law. 1 *H. H.* 731.

Sir Matthew Hale says, If a rape be charged to be committed on an infant under twelve years of age, she may be a competent witness, if she has sense and understanding to know the nature and obligation of an oath; and even if she has not, he thinks she ought to be heard without oath, to give the court information; though that alone will not be sufficient to convict the offender. 1 *H. H.* 634. What evidence is necessary on an indictment for a rape on an infant.

And *Sir William Blackstone* says, It seems now to be settled, that, in such cases, infants of any age are to be heard; and, if they have any idea of an oath, to be also sworn; it being found by experience, that infants of very tender Of swearing infants.

tender years often give the clearest and truest testimony. But, whether the child be sworn or not, it is to be wished, in order to render her evidence credible, that there should be some concurrent testimony of time, place, and circumstances, in order to make out the fact; and that the conviction should not be grounded singly on the unsupported accusation of an infant under years of discretion. 4 *Blackst.* 214.

A child cannot
be an evidence
without oath.

But in the case of *Ormychund v. Barker*, *M.* 1744, lord chief-justice *Lee* said, It had been determined at the Old Bailey, upon mature consideration, that a child should not be admitted as an evidence without oath: and lord chief-baron *Parker* also said, it was so ruled at *Kingston* assizes, before lord *Raymond*, where, upon an indictment for a rape, he refused the evidence of a child without oath. 1 *Atk.* 21.

An infant on an indictment for a rape, cannot be admitted to give evidence, except upon oath. *Leach's Cas. in Cr. Law*, 114. *Powell's* case at the assize for *York* in 1775.

And in the case of *K. v. Brazier*, it was solemnly determined, that no testimony can be received except upon oath; and an infant under the age of seven years may be sworn, if she appears to understand the nature of an oath. It was as follows:

No testimony
can be received
but upon oath.

This was a case reserved for the opinion of the twelve judges, by Mr. justice *Gould*, at the summer assizes for *York* in 1779, on the trial of an indictment for a rape on the body of an infant under seven years of age. The information of the infant was received in evidence against the prisoner; but, as she had not attained the years of presumed discretion, and did not appear to possess sufficient understanding to be aware of the dangers of perjury, she was not sworn. The prisoner was convicted; but the judgment was respited, on a doubt, Whether evidence, under any circumstances whatever, could be legally admitted in a criminal prosecution, except upon oath? The judges were unanimously of opinion, That no testimony whatever can be legally received except upon oath; and that an infant, though under the age of seven years, may be sworn in a criminal prosecution, provided such infant appears, on strict examination by the court, to possess a sufficient knowledge of the nature and consequences of an oath: for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the court; but,

if they were found incompetent, their testimony cannot be received. *Leach's Cas. in Cr. Law*, 346.

So much respecting infants; and a woman who has been ravished must give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact which concur in that testimony. 1 *H. H.* 633. The woman's oath.

If the witness be of good fame; if she presently discovered the offence, and made pursuit after the offender; shewed circumstances and signs of the injury, whereof many are of that nature, which only women are the most proper examiners and inspectors; if the place, wherein the fact was done, was remote from people, inhabitants, or passengers; if the offender fled for it: these, and the like, are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. 1 *H. H.* 633. Circumstances in favour of it.

But, if she concealed the injury for any considerable time, after she had an opportunity to complain; if the place where the crime was supposed to be committed, were near inhabitants or common recourse or passage of passengers, and she made no outcry when the fact was supposed to be done, when and where it is probable she might be heard by others; or if a man prove himself to be in another place, or in other company, at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to be done in a place where it was impossible the man could have access to her at that time, as if the room was locked up, and the key in the custody of another person: these and the like circumstances carry a strong presumption, that her testimony is false or feigned. *Id.* Circumstances against it.

It is said, by Mr. *Hawkins*, that all who are present and actually assist a man to commit a rape, may be indicted as principal offenders, whether they are men or women. 1 *Haw.* 108. Persons aiding principals.

Hence it appears that a woman may be principal to the ravishment of another.

And lord *Hale* says, that by the 18 *Eliz. c. 7*, The principals in rape are ousted of clergy, whether they are principals in the first degree, to wit, he who committed the fact; or principals in the second degree; to wit, present, aiding, and abetting; but accessaries before and after have their clergy. 1 *H. H.* 633. Accessaries.

Rape was felony at common law, for which the offender was to suffer death; but before this act the offence was made less, and the punishment changed, from death to the loss Punishment by common law.

loss of those members whereby he offended; that is to say, it was changed to castration and the loss of his eyes; unless she that was ravished demanded him for her husband, before judgment, and which was only in the will of the woman, and not of the man; and the said punishment of loss of members continued till the making of the statute of 3 *Edw.* 1. c. 13. 2 *Inst.* 180, 181.

Death without benefit of clergy.

By the 3 *Ed.* 1. c. 13, Rape was made a trespass, subjecting the offender to two years' imprisonment, and a fine at the king's will: it was again made felony by the 13 *Ed.* 1. c. 34; and finally, by the 18 *Eliz.* c. 7, was excluded from the benefit of the clergy.

And by the 13 *R.* 2. *st.* 2. c. 1, No charter of pardon shall be allowed for rape, unless the rape be specified therein.

Receipts.

Duty on receipts for legacies, and distributive shares of the estates of intestates.

THE 20 *G.* 3. c. 48, enacts, That for every skin or piece of vellum or parchment, or sheet or piece of paper, on which any receipt or other discharge for any legacy left by any will or other testamentary instrument, or for any share or part of a personal estate divided by force of the statute of distributions, or the custom of any province or place, shall be written or printed, the amount whereof shall not exceed the value of 20*l.* shall be paid a stamp-duty of 2*s.* 6*d.*

And by the 23 *G.* 3. c. 58, 2*s.* 6*d.* more.

And where the amount thereof shall exceed 20*l.* and not amount to 100*l.* a stamp-duty of 5*s.* Also by the 23 *G.* 3. c. 58, 5*s.* more.

Where the amount thereof shall be of or exceed 100*l.* a stamp-duty of 20*s.*: and by the 23 *G.* 3. c. 58, 20*s.* more. And a like additional duty of 20*s.* for every further sum of 100*l.*

Exceptions.

But this shall not extend to charge with the additional duties imposed by 23 *G.* 3. c. 58, any legacy or distributive share to the wife, children, or grand-children of the deceased. *Ib.* *f.* 2.

Stamp duty on receipts for money.

The 23 *G.* 3. c. 49, enacts, That for every piece of vellum or parchment, or sheet or piece of paper, on which any receipt or other discharge given on the payment of money, amounting to 2*l.* and under 20*l.* shall be written, shall be

be charged a stamp duty of 2*d*.; of or above 20*l*. a stamp duty of 4*d*. *f*. 3.

But this shall not extend to charge any receipt for money paid into the bank of *England*, or the house of any banker; or for money received on any dividend from the public funds; or on the back of any bill of exchange, promissory or other note, duly stamped; or upon any bank note or bank post bill; or to any letter acknowledging the arrival of any bills, notes, or remittances; or any receipt indorsed on, or contained in the body of any deed, bond, mortgage, or other obligatory instrument duly stamped; or to any release or acquittance by deed; or to any receipt on account of the army or navy; or to any receipt given on the back of any foreign bill of exchange; or to any receipt for money payable for drawbacks on bounties upon exportation of goods; or to certificates of over-entry of any duties of customs; or to any postage bills allowed to masters of ships for making a just report of their cargo at the custom house; or to any receipt given for the consideration for the purchase of any share in any publick fund, or in the stocks of the corporations of the bank of *England*, *East India* company, or *South Sea* company, or for the dividends payable on such shares of the said stocks. 23 *G.* 3. *c.* 49. *f.* 4, 7. 24 *G.* 3. *c.* 7. *sess.* 1. *f.* 6, 7.

Exceptions as to money paid into any bank, or on dividends from the funds, or on the back of bills of exchange, notes, bank-notes or bank-post bills, or to any receipt or acquittance by deed, &c.

And, to prevent frauds, the whole sum for which any receipt shall be given shall be really and *bona fide* inserted in such receipt: and if any person shall give or accept any receipt, in which a less sum shall be expressed than that actually received; or shall separate the sum actually paid or received into divers receipts; or shall be guilty of any contrivance with intent to evade the said duties, he shall forfeit 20*l*. 23 *G.* 3. *c.* 49. *f.* 10.

Penalty on evading the duty.

And all receipts wherein the sum mentioned shall be expressed to be in full or as a satisfaction of *all demands*, and all general acknowledgments of debts or demands being discharged, shall be deemed receipts for above 20*l*. and accordingly liable to the stamp-duty of 4*d*. *Id.* *f.* 11.

And the said duties shall be paid by the person by whom the receipt shall be required; except for money paid to any person in respect of any salary, pension, debt, or other sum payable by the king; in which case such duty shall be paid by the person giving the same. *Id.* *f.* 12.

Duty by whom paid.

Provided, that unstamped receipts in which any sum under 2*l*. and receipts impressed with a two-penny stamp, in which any sum amounting to 2*l*. and under 20*l*. shall be expressed, and which shall (by the insertion of the words

Receipts under 2*l*. and from 2*l*. to 20*l*.

" in

"in full of all demands" or otherwise) be given as a general acknowledgment of all debts or demands being discharged, may be pleaded or given in evidence, and available in law, for which sum so expressed, but not as a general acknowledgment of all debts or demands being discharged. *Id.* /s. 15, 16.

And by the 24 G. 3. c. 7. *sess.* 1. /s. 5, Every person required to give any receipt, may provide the paper properly stamped, and add the value thereof to the account of the person requiring the same.

Writing receipt
on unstamped
paper.

If any person shall write or sign, or cause to be written or signed, any receipt liable to the said duty, which has not been first duly stamped, he shall forfeit 5/. *Id.* /s. 1.

And no receipt shall be stamped after it is written or signed, but upon payment of 10/. and the duty. *Id.* /s. 8.

If any receipt for which any duty is required, shall not be stamped, or shall be stamped with a lower duty than is required, it shall not be given in evidence in any court whatsoever. 23 G. 3. c. 49. /s. 14.

Penalties how
recovered and
applied.

The duties shall be under the management of the commissioners of the stamp duties; and the duties and penalties levied as other duties and penalties by former stamp-acts; or otherwise, such penalties may be recovered before one neighbouring justice, who, on complaint made within one year after such offence was committed, may summon the party accused, and the witnesses; and on confession, or oath of one witness, give judgment therein, and cause such penalty to be levied by distress; and for want of sufficient distress, such justice may commit the offender to prison for three months, unless such penalty shall be sooner paid; the penalty to be distributed half to the king, and half to him who shall sue. Persons who think themselves aggrieved may appeal to the next sessions which shall happen fourteen days after such conviction, on giving reasonable notice, and also on giving security to the amount of such penalty and costs. And such justice, where he shall see cause, may mitigate such penalty, not exceeding one moiety thereof and costs. 24 G. 3. c. 7. *sess.* 1. /s. 9, 11, 12.

Witnesses not appearing, having been duly summoned, (and reasonable expences tendered) without sufficient cause, shall forfeit 40s. to be recovered in like manner. *Id.* /s. 10.

Recognizance.

RECOGNIZANCE, (*recognitio*, Lat. *reconnaissance*, Fr.) What it is. is a bond or obligation of record, testifying the recognizer to owe the recognizee a certain sum of money; and the acknowledging of the same is to remain of record; and none can take it but a judge or officer of record. *Dalt.* c. 186.

In some cases the justices of the peace are enabled to take these recognizances, by the express words of certain statutes; but, in other cases, (as for the peace, good behaviour, and the like) it is rather in congruity, and by reasonable intendment of the law, than by any authority given them, either by their commission, or by the statute law. *Crom.* 125. *Dalt.* c. 168.

In what cases taken by justices of the peace.

But wherever any statute gives them power to take a bond of a person, or to bind over any man to appear at the assizes or sessions, or to take sureties for any matter or cause, they may take a recognizance: and in all cases where they have authority given them to cause a man to do a thing, there it seems they have in congruity power given them to bind the party by recognizance to do it; and if the party shall refuse to be bound, the justice may send him to gaol. *Dalt.* c. 168.

Where a justice has power to bind over, he may take a recognizance.

But he can only take recognizance of such matters as concern his office: if he does, it seems to be void. *Dalt.* c. 168.

Every obligation and recognizance must contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. *Barl. Recog.*

And, when taken by justices of the peace, must be made to our lord the king; on pain of imprisonment of any person who shall take it otherwise. *To whom made.*

The recognizance is usually subject to a condition, which is either indorsed, underwritten, or contained within the body of it; upon performance of which the recognizance shall be void. *Id.* *Condition.*

When the parties are to enter into recognizance, call them by their names thus: "You *A. B.* acknowledge to owe to our sovereign lord the king the sum of
"and you *C. D.* acknowledge to owe to our sovereign lord the king the sum of ; to be levied of your respective goods and chattels, lands, and tenements, for the use of
Form of recognizance, and manner of taking it.

"of our said lord the king, his heirs and successors, if default shall be made in the condition following; that is to say, if you the said *A. B.* shall make default in appearing, &c."—But the parties need not sign it." *Id.*

And the justices usually make a mark at the foot of the examination, *A. B.* in 40^l. to appear, &c. and from such short memorandum afterwards make out a record. *Id.*

Recognizance a matter of record.

The recognizance, however, is a matter of record as soon as it is taken and acknowledged, though it be not made up.

When made up, if the justice shall only subscribe his name to it, without the seal, it is sufficient; and that may be in either of these sorts—*Acknowledged before me, E. B.*; or he may only subscribe his name thus, *E. B. Dalt. c. 176.*

Record is a memorial or remembrance.

Lord *Coke* observes (2 *Inst.* 260), that a record is a memorial or remembrancer in rolls of *parchment*, &c. Probably he mentions *parchment*, as being more durable than paper; but, as there is no law which prohibits its being ingrossed on paper, it seems to be as good in law on paper as if it were on parchment.

How to be certified.

By the 3 *H. 7. c. 1*, The justices shall certify their recognizance for keeping the peace to the next sessions, that the party may be called; and if he make default, the default shall be recorded; and the recognizance, with the record of the default, shall be sent and certified into the Chancery, King's Bench, or Exchequer.

But, by the 1 & 2 *P. & M. c. 13*, in cases of felony, the recognizances are to be certified to the general gaol-delivery.

Estreating recognizances.

The judges of oyer and terminer are the proper judges whether recognizances ought to be estreated or spared; and it is for the advantage of public justice that they should have such power, if, upon the circumstances of the case, they see fit. 10 *Mod.* 278. *K. v. Tomb.*

Whence it seems reasonable, that the justices of the peace in the quarter sessions should have the like power in respect of offences cognizable there. 4 *Burn*, 85.

And where recognizances are estreated, and the offence is not attended with aggravating circumstances, the following statute points out a remedy:

Relief to be had from the disagreeable consequences of forfeiting recognizances by

By the 4 *G. 3. c. 12*, Whereas many recognizances have estreated into the Exchequer, against persons for not appearing as parties or witnesses in the courts of record at *Westminster*, or at the assizes, and general quarter-sessions, or other courts of record, for not prosecuting indictments there,

there, or otherwise not performing the conditions of such recognizances; many of which neglects of duty have happened by the inattention of ignorant people, some of whom are imprisoned, and others liable to be so, by the process constantly issued against them out of the court of exchequer, though no other prosecution be subsisting, but merely for such forfeitures of their recognizance, for which there are no easy means at present for poor persons especially, to procure any discharge; for remedy thereof, it shall be lawful for the barons of the Exchequer, on affidavit and petition by and on the behalf of the person imprisoned, or liable to be imprisoned, on the forfeiture of such recognizance, to discharge such person, by order, without any *quietus* to be sued out for that purpose; for which order, no more shall be taken than one pound and one shilling. Provided, that no discharge shall be given on such petition, where any debt is due to the crown, other than by the recognizance so prayed to be discharged; nor in any cases of defrauding the revenue by contraband trade, or assaulting the officers of the customs or excise in the execution of their duty, or any person lawfully assisting them therein.

petitioning the
barons of the
Exchequer.

Recusant. See POPERY, and PUBLIC WORSHIP.

Register, Duty on.

REGISTER of the parish-church, is that wherein baptisms, marriages, and burials, are in each parish regularly registered. This regulation was instituted by lord Cromwell, in September 1538, when he was vicar-general to Henry VIII. *Cowell.*

But no duty was imposed on such registers or entries, till the 23 G. 3. c. 67, enacted, that, upon the entry of any burial, marriage, birth, or christening, in the register of any parish, precinct, or place, shall be paid a stamp-duty of 3d. The same to be under the management of the commissioners of the stamp-duties. *f. 1, 2.*

And any parson, vicar, or curate, or other person having authority to make entries, who shall make any such entry before the parchment, vellum, or paper, shall have been duly stamped, shall forfeit 5*l.* *f. 3.*

Duty on entries
of burials, mar-
riages, births, or
christenings.

Penalty on
entering on
unstamped
paper, &c.

Duty of 3d. to
be demanded.

And every parson, vicar, curate, or other person having authority to make such entry, shall, previous thereto, demand and receive, from the undertaker or other person employed about such funeral, or from the parties married, or from the parent or other person requiring the christening of such child, the sum of 3d; and if he shall neglect or refuse to pay the same on demand, he shall forfeit 5/.

Stamps to be
provided.

For the charging of these duties, the churchwardens and overseers of the poor, or one of them, shall from time to time provide one or more book or books for the registering of burials, marriages, births, and christenings, with such stamps for each entry as by this act is required; and shall pay for the same and the stamps to be contained therein, out of the rates under their management, and receive back the money which shall be so paid from the persons authorised to demand and receive the said duty on such entries. *s. 5.*

Licence to
register without
stamps.

Provided that no parson, vicar, curate, or other person, shall be subject to any penalties for registering without stamps, where a licence under the hands of three commissioners, or some officer or officers by them empowered, shall have been granted, signifying their or his permission or approbation that such entry may be made without stamps; so as the person or persons having the custody of such register, do, from time to time, when required, permit the commissioners, or any officer or agent appointed by them, to inspect such register, and pay to the receiver-general of the said duties, or other person appointed by the commissioners, all such sums as ought to be paid in respect of such entries. *s. 6.*

Exceptions of
burials from
workhouses,
hospitals, &c.

But nothing herein shall extend to charge the entry in any parish-register of the burial of any person from any workhouse or hospital, or at the sole expence of any charity; nor the entry of the birth or christening of any child whose parents shall then receive any parish relief.

But the provisions of this act shall extend to the people called Quakers, and the registers of births, burials, and marriages now kept by them, shall be liable to the stamp duties. *s. 8.*

The quakers, however, are, by the religion they profess, exempted from the three-penny duty on christenings, though they must pay it on births.

And by the 25 G. 3. c. 75, The said duties shall extend to all protestant dissenters.

Allowance for
collecting of
2s. in the
pound.

By the 23 G. 3. c. 67, The receiver-general, head distributor, or other persons appointed by the commissioners for that purpose, shall make an allowance to the parson, vicar, curate, or other person who received the duties, after the rate
of

of 2s. in the pound out of the money by him accounted for and paid. *f. 9.*

All prosecutions for recovering the duties, and for all Penalties how forfeitures and offences, shall be determined by one justice ^{recovered.} residing near to the place where the forfeiture shall be made or offence committed, who shall summon the party accused, and upon his appearance, or neglecting to appear, shall examine the matter, and on proof of the offence, by confession or oath of one witness, shall give judgment, and issue his warrant to levy the forfeiture on the goods of the offender, and sale thereof, if not redeemed in fourteen days.

f. 10.

The justices may mitigate the penalties, costs to the officers and informers being allowed over and above the mitigation: provided the mitigation does not reduce the penalties to less than a moiety, over and above such costs. ^{Justices may mitigate the penalties.}

f. 11.

And all such forfeitures (necessary charges for the recovery thereof being first deducted) shall be half to the king, and half to him who shall inform and sue. *f. 12.* ^{Forfeitures how to be distributed.}

Persons who think themselves aggrieved may appeal to the next sessions. *f. 13.*

Regrating. See FORESTALLING.
Replevin. See DISTRESS.

Rescue, or Rescous.

RESCUE, from the French *rescouter*, to recover, signifies a forcible setting at liberty, against law. *1 Inst. 160.* ^{Rescue, what.}

But it is said, to rescue a felon taken on a general warrant, to answer what shall be objected against him, no cause being expressed in the warrant, is not felony. *1 H. H. 578.* ^{Rescuing a person taken on a general warrant.}

Nor unless a felony has been really done. *Hale's Pl. 116.*

And it seems necessary that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person; but, if he be in the custody of an officer, then at his peril he is to take notice of it. *2 H. H. 606.*

If the principal be found not guilty, or guilty of a crime not capital, the rescuer ought to be discharged of felony; ^{M m 2} but

but he may be ~~fin~~ed for the misdemeanor. 1 H. H. 598, 599.

And to hinder a person, who has committed felony, from being arrested, is a misdemeanor, though no felony; but if the party be arrested, and then rescued, if the arrest was for felony, the rescuer is a felon; if for a treason, a traitor; if for trespass, fineable. *Hale's Pl.* 116. 2 *Haw.* 140.

By the 6 G. 1. c. 23. s. 5, If any person shall rescue felons ordered for transportation, or assist them in making their escape, he shall be guilty of felony, and suffer death without benefit of clergy.

There are many other special penalties for rescuing offenders by particular statutes, which are noticed under their respective titles.

Though a *prison-breaker* may be arraigned for prison-breaking, before he is arraigned for the crime for which he is imprisoned; yet he who *rescues* one imprisoned for felony cannot, according to the better opinion, be arraigned for such offence as for a felony, till the principal offender be attainted; but he may be immediately proceeded against for misprision, if the king pleases. 2 *Haw.* 140.

And therefore, if the principal die before the attainder, he shall be fined and imprisoned. *Hales's Pl.* 116.

Indictment.

An indictment of rescous must set forth the nature and cause of the imprisonment, and the special circumstances of the fact in question. 2 *Haw.* 240.

In an *action* for a rescue, the plaintiff must alledge in his declaration all the material circumstances; as that such a writ issued, that the defendant was arrested, and in custody, &c. 1 *Lutw.* 130.

Benefit of clergy.

Though the felony for which a man is arrested, be not within clergy; yet the rescuing is within clergy. 1 H. H. 599, 607.

Outlawry.

On the return of a rescous, process of outlawry shall issue. 2 *Haw.* 302.

For further information on this head, see the titles ARREST, and ESCAPE.

Restitution of Stolen Goods.

RESTITUTION is the yielding up again, or restoring of any thing unlawfully taken from another. There are three means of restitution of goods, for the party from whom they were stolen; viz. 1. By appeal of robbery or larceny. 2. By the statute of the 21 H. 8. c. 11. And, 3. By the course of the common law. 1 H. H. 538.

If the party were convicted upon an appeal of robbery or larceny, restitution of the goods contained in the appeal was to be made to the appellant; for it is one of the ends of that suit. 1 H. H. 538. Upon appeal.

Hence it is, that, if in an appeal of felony or robbery the appellant omit any of the goods stolen from him, they are forfeit and confiscate to the king. 1 H. H. 538.

And this appeal must be upon fresh suit; but, though the law was anciently strict herein, as to the time and manner of the pursuit and apprehending of the felon, yet it is now more liberal. 1 H. H. 540. Upon fresh suit.

If it shall appear to the court, upon the evidence of the trial, or otherwise, that the party has been reasonably diligent in prosecuting the offence, the justices may, in their discretion, award a restitution without making enquiry concerning the fresh suit. 2 Haw. 171.

And if the felon be taken by any others, as by the sheriff, if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a fresh suit, if he used his diligence shortly after the felony to have taken him. 1 H. H.

With respect to the felon's waiving the goods stolen, see the titles ESTRAY and WAIF.

Before the 21 H. 8. c. 11, there was no restitution but upon an appeal, and not on indictment; but by that statute it is enacted, that if any felon hereafter do rob or take away any money, or goods or chattels, from any of the king's subjects, from their persons or otherwise, and thereof be indicted and arraigned, and found guilty thereof, or otherwise attainted by reason of evidence given by the party so robbed, or owner of the said money, goods and chattels, or by any other by their procurement; that then the party so robbed, or owner, shall be restored to his said money, goods and chattels; and that as well the justices of gaol-delivery as other justices before whom such felon shall be found guilty, or Restitution by the statute of 21 H. 8.

Restitution of Stolen Goods.

otherwise attainted, may award a writ of restitution, in like manner as though any such felon were attainted at the suit of the party in appeal.

Found guilty, or otherwise attainted] Therefore if the owner prefers a bill of indictment, which is found, and the felon flies, and is outlawed, he shall have restitution; for he gave evidence on the indictment, which, though not a conviction, is the ground of the outlawry, which is an attainder. 1 H. H. 545.

The statute gives restitution to the party robbed, or owner.

The statute says, *the party so robbed, or owner*; therefore, if the servant be robbed of the master's money, or his servant, by his procurement, give evidence and convict the felon, the master shall have a writ of restitution, if it appear upon the indictment and evidence that it was the master's money, the statute giving restitution to the *party robbed, or owner*. 1 H. H. 542.

Restitution to executors.

Also if the testator is robbed, and the felon is convicted upon the procurement of the executor; such executor shall have restitution; for this being a beneficial law, ought to be construed beneficially, so as to extend to executors and administrators. 3 Inst. 242.

Where goods are stolen, and not waived in flight, nor seized by the king's officers or lord of the manor, nor sold in open market, the owner may take them again without any writ of restitution, or he may bring his action for them, even though he shall prosecute the offender. 2 Haw. 168 Kely. 48.

And the 31 Eliz. c. 12, enacts, that, Where horses are stolen, and sold in open market, and the owner claims them again within six months, and pays the buyer as much as they cost him, he shall have them again without prosecution.

But if the goods are waived by the felon in his flight, or if not waived, are seized by the king's officers, or lord of the manor, as suspecting them to be stolen; the party shall not have restitution, unless the felon be convicted at his prosecution. 2 Haw. 168. Kely. 48.

And in such case, he shall be entitled to no more than what is mentioned in the indictment, though other goods were stolen at the same time; and the reason is, because by such omission the offender might have escaped. Kely. 49. 1 H. H. 545.

To his said money, goods, and chattels] A man stole cattle, and sold them in open market in Coventry; the sheriff seized the thief and the money, and the thief was convicted and hanged at the prosecution of the owner of the cattle, and

and he had restitution of the money; for, though the statute gives power to the justices to award restitution of the money, goods, and chattels, and though the money in this case was not stolen; yet, because it arose by stealing, it shall be within the equity, though not in the very words of the statute. *Noy*, 128.

It has however been a great question, if goods are stolen, and by the thief sold in the market overt, whether, the thief being convicted on the evidence of the party robbed, he shall have restitution on this statute of the thing sold or not, the buyer not being privy to the felony: but lord *Hale* argues strongly, that he shall have restitution, notwithstanding the sale in market overt of the goods stolen. 1. Because this act was made to encourage persons robbed to pursue malefactors, and therefore they have an assurance of restitution: and it would be small encouragement if a thief, by sale in a market overt, should elude it. 2. Because the man that is robbed, is robbed against his will, and cannot avoid it; but the buyer of stolen goods may chuse whether he will buy, or may refuse to buy unless well secured of the property of the goods, or knowing the owner. 1 *H. H.* 542, 3, 4. 2 *Haw.* 170. *Kely.* 48. *Dalt.* c. 164.

In the case of *Golightly* and *Reynolds*, *M.* 12 G. 3, an action of trover was brought for six silver table spoons, two silver salts, two silver salt-spoons, one bank-note of 20*l.* No 203. dated 19 Novem. 1771, and ten guineas in gold; all which were the produce of a bank-note of 50*l.* stolen by one *Ferguson*, found on him when taken up, and produced in evidence at the Old Bailey by the plaintiff, the prosecutor, at the trial of the said *Ferguson*, who was convicted of the theft of the said bank-note of 50*l.* The question was, Whether the plaintiff can recover in this action? For the plaintiff it was argued, that till the 21 *H.* 8. c. 11, restitution was not given, except on appeal. It gives indeed a particular mode, by writ of restitution, but does not exclude any other mode. Mr. *Hawkins* says, there is a method of recovery when the very goods demanded were not stolen, the felon having sold or otherwise disposed of them; in which case the prosecutor has a right to what the things were sold for. And so was the case of gold stolen, and changed into silver, in the case of *Holiday v. Hicks*, *Cro. Eliz.* 661. And cattle stolen and sold in open market, *Noy*, 128. *Harris's* case. That were this action of trover not to be good, another action cannot be well conceived. An action of detinue would not lie properly, as being rather for the things themselves. On the other side, it was

Restitution of Stolen Goods.

contended, that the statute only gives the same remedy upon indictment, as had before been upon appeal, which was by writ of restitution. To maintain trover, the plaintiff must state and prove that he was possessed of these goods, and accidentally lost them, and that the defendant found and refused to restore them. By lord *Mansfield*, chief justice: It would be the hardest prerogative in the world, if an innocent party should lose his goods to the crown, because a felon had taken them away. There is indeed very great reason why, before prosecution, trover should not be brought, in order to avoid compounding of the felony. But there is no question, but some way or other, and to some extent, a plaintiff is intitled to restitution. But how are we to construe the restitution which should be made? Shall we construe it narrowly, for the very thing stolen? No: liberally, against so odious a prerogative. I do not see why trover is not good. The statute puts an *indictment* in the same case as a writ of *appeal*. The statute says, it shall be restored; but leaves the party to his own way of recovery. The statute gives him a particular remedy, but does not take away his other remedy. I do not believe there has been a writ of restitution these two hundred years. The matter has been already adjudged in former cases, as in *Noy* 128, and *Cro. Eliz.* 661, very rightly, in favour of natural justice, against the rigour of the forfeiture. And the plaintiff had judgment, *Lofft*, 88.

As if the felon were attainted on appeal.] And yet upon this statute, though there be no *fresh suit*, nor any enquiry by inquest touching the same, if the offender be a convict upon the evidence of the party robbed, or owner, he shall have restitution: and this is the constant practice, though in case of an appeal it be otherwise. 1 *H. H.* 545.

But if it shall appear to the court, that the party has been guilty of a gross neglect in prosecuting; it seems he shall not be entitled to restitution. 2 *Haw.* 171.

Restitution by
the common
law.

By the course of the common law, If the owner takes his goods again of the offender, in order to favour him, or maintain him, this is unlawful, and punishable by fine and imprisonment; but if he shall take them again without any such intent, it is no offence. 1 *H. H.* 546.

But after the felon is convicted, it cannot be any crime to take his goods back again, where he finds them; because he has pursued the law upon him, and may have his writ of restitution, if he pleases. 1 *H. H.* 546.

Riot, Rout, and unlawful Assembly.

- I. Definition of Riot, Rout, or unlawful Assembly.
- II. How restrained by a private Person or a Peace-Officer.
- III. How restrained by one Justice.
- IV. How restrained by two Justices.
- V. How by Process out of Chancery.

I. Definition of Riot, Rout, or unlawful Assembly.

RIOT, *riota*, and *riottum*, from the French *riotte*, signifies the forcible doing of an unlawful thing, by three or more persons assembled together for that purpose. *West.* Derivation of riot.

Symbol. p. 2.

When three persons or more shall assemble themselves together, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful; if they only meet for such a purpose or intent, though they shall after depart of their own accord, without doing any thing, this is an *unlawful assembly*. 1 Haw. 155. Definition of unlawful assembly.

If, after their first meeting, they shall move forwards towards the execution of any such act, whether they put their intended purpose into execution or not; this, according to the general opinion, is a *rout*. A rout.

And if they really execute such a thing, then it is a *riot*. 1 Haw. 155. Dalt. c. 136.

Two things are common, however, to *riot*, *rout*, and *unlawful assembly*: the one, that *three persons* at least be gathered together; the other, that being together they disturb the peace, either by words, shew of arms, turbulent gestures, or actual violence. *Lamb. Eirin. lib. 2. c. 5.*

Three persons or more.] Therefore if the jury shall acquit all but two, and find them guilty, the verdict is void, unless they are indicted together with other rioters unknown; because they find them guilty of an offence, of which it is impossible they should be guilty; for there cannot be a riot where two only are concerned. 2 Haw. 441. Verdict against only two is void.

As

As in the case of *K. v. Scott and Hams*: Of six persons who were indicted for a riot, two died before trial, two were acquitted, and two convicted. It was moved in arrest of judgment, because two only could not be found guilty of a riot, unless they were indicted *together with other rioters unknown*, which was not the case here; for it does not appear that any others were guilty except these two; here is no finding as to the dead person. By lord *Mansfield*: Six were indicted; two of them are acquitted; two are dead untried: the jury have found the other two guilty of a riot. Consequently it must have been with one or both of those who have not been tried, as it could not otherwise have been a riot. *Burr. Mansf. 1262.*

Assemble themselves together.] It seems agreed, that if a number of persons, being met together at a fair, market, or any other lawful and innocent occasion, happen, on a sudden quarrel, to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which only those are guilty who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it: yet it is said, that if persons innocently assembled together, shall afterwards, upon a dispute happening to arise among them, form themselves into parties, with promise of mutual assistance, and then make affray, they are guilty of a riot; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first assembling together had been on such a design; however, it seems clear, that if, in an assembly of persons met together on any lawful occasion, a sudden proposal should be started of going together in a body to pull down a house or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to and executed accordingly, the persons concerned cannot but be rioters; because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another. *1 Haw. 156, 157.*

Person joining
rioters.

Also if a number of people assemble, in a riotous manner, to do an unlawful act, and a person, who was upon the place before upon a lawful occasion, and not privy to their first design, comes and joins himself with them, he will be guilty of a riot equally with the rest: by *Holt*, chief-justice. *L. Raym. 965. T. 2 Ann.*

Same

Some enterprize of a private nature.] It seems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or gaining the possession of tenements, the title whereof is in dispute, or such like matters relating to the interest or disputes of particular persons, and no way concerning the public; for where the intention of such an assembly is to redress public grievances, as to pull down inclosures in general, or reform the religion, and the like, it is high-treason.

1 *Haw.* 157.

It seems clearly agreed, that in every riot there must be some such circumstances of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people: as the shew of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done to the terror of the people. Hence it clearly follows, that assemblies, or wakes, or other festival times, or meetings for the exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous.

1 *Haw.* 157.

And any person may, in a peaceable manner, assemble a proper company to do any lawful thing; or to remove or cast down any common nuisance.

Dalt. c. 137.

And if several are assembled lawfully, without any ill intent, and an affray happens, none are guilty but such as act; but, if the assembly was originally unlawful, the act of one is imputable to all. By *Holt*, chief-justice. *2. v. Ellis.* 2 *Salk.* 595.

Infants, under the age of discretion, are not, within the aforesaid description, punishable as rioters.

1 *Haw.* 159.

II. How restrained by a private Person, or a Peace-Officer.

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein from executing their purpose; and also by stopping others whom he shall see coming to join them.

1 *Haw.* 159.

And, by the common law, the sheriff, constable, and other peace-officers, may and ought to do all that in them lies towards the suppressing of a riot; and they may command all other persons to assist therein.

Id.

III. How

III. How restrained by one Justice.

How restrained
by one justice.

The 34 Ed. 3. c. 1, enacts, That the justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished, according to the law and custom of the realm; and according to that which to them shall seem best to do, by their discretions and good advisement.

One justice may
arrest offenders,
and bind them
to good be-
haviour.

For the advancement of justice this statute has been liberally construed; for it has been resolved, that if a justice finds persons riotously assembled, he alone has not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail; but he may also authorize others to arrest them, by a bare verbal command, without other warrant; and by force thereof, the persons so commanded may pursue and arrest the offenders in his absence as well as presence. It is also said, that after a riot is over, any one justice may send his warrant to arrest any person who was concerned in it, and that he may send him to gaol till he shall find sureties for his good behaviour. 1 Haw. 160.

But if such jus-
tice shall arrest
an innocent
person, he will
be liable to an
action of tres-
pass.

But it seems agreed, that no one justice has any power, by force of this statute, either to record a riot on his own view, or take an inquisition thereof after it is over: and if one justice, proceeding on this statute, shall arrest an innocent person as a rioter, he is liable to an action of trespass; and the party arrested may justify the rescuing himself, because no single justice is by this statute made a judge of the offence. But if a riot shall be committed by persons armed in an unusual manner, contrary to the statute of *Northampton*, 2 Ed. 3. c. 3, and any one justice acting *ex officio*, in pursuance of the statute, seize the armour, and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity. For the same reason, if a justice proceeding on the statute of the 15 R. 2. against forcible entries and detainers, shall, upon his own view, record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed. And if a justice, acting as a judge by any statute empowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such uncontrollable credit to all matters of record, made by any judge of record as such, that

it will never admit of an averment against the truth thereof.

1 Haw. 160.

But if the rioters exceed the number of twelve, the offence is greatly enhanced, and the power of one justice proportionably enlarged by the 1 G. 2. c. 5. (commonly called the riot act) which is required to be read at every quarter-sessions and leet: by which it is enacted, That if any persons, to the number of twelve, being unlawfully assembled to the disturbance of the peace, and being required by one justice of peace, or by the sheriff or his under-sheriff, or by the mayor, &c. of any city, &c. by proclamation in the king's name to disperse themselves, and depart to their habitations or lawful business, shall riotously continue together by the space of one hour after such proclamation, such continuing together to the number aforesaid shall be felony without benefit of clergy. *f. 1, 7.*

Continuing one hour after proclamation, is felony without benefit of clergy.

The form of the proclamation shall be in the manner following, viz. the justice of peace, &c. shall, among the rioters, or as near to them as he can safely come, command silence with a loud voice, while proclamation is making, and then shall openly, with a loud voice, make or cause proclamation in these words, or like in effect:

"Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king George, for preventing tumults and riotous assemblies. *God save the king.*" And every justice, &c. on notice of such unlawful assembly, is to resort to the place, and make proclamation in manner aforesaid. *f. 2.*

Form of proclamation.

If such persons so unlawfully assembled shall, after proclamation made, not disperse themselves within one hour, it shall be lawful for every justice, sheriff, &c. and every high and petty constable, or other peace-officer, and for such other persons as shall be commanded to be assisting to such justice, &c. (who are empowered to command all his majesty's subjects, of age and ability, to be assisting) to seize such persons and carry them before a justice of peace; and if such persons shall be killed or hurt by reason of their resisting the persons so dispersing or seizing them, such justices, &c. shall be indemnified. *f. 3.*

If persons resisting are killed or hurt, the persons endeavouring to disperse them shall be indemnified.

If any such persons so riotously assembled (though under the number of twelve, and whether any proclamation be made or not) shall unlawfully demolish or pull down, or begin to pull down, any church or chapel, or any building for religious

religious

religious worship, certified and registered according to the act of 1 *W. & M. c.* 18. (called the act of toleration) or any dwelling-house, barn, stable, or out-houses, it shall be felony without benefit of clergy. And any one justice may proceed against them, as against other felons. *f.* 4.

If any person shall with force oppose, or in any manner wilfully hinder or hurt, any person who shall begin to proclaim, whereby such proclamation shall not be made, such offenders shall be adjudged felons without benefit of clergy; and all persons so unlawfully assembled to the number of twelve, to whom proclamation ought to have been made, if the same had not been hindered, shall, if they continue together an hour after such hindrance, knowing thereof, be adjudged felons without benefit of clergy. *f.* 5.

Hundred to answer.

And the hundred, city, or town, shall answer the damages thereof, as in cases of robbery. *f.* 6.

Limitation.

No person shall be prosecuted for any offence contrary to this act, unless prosecution be commenced within twelve months after the offence committed. *f.* 8.

IV, How restrained by two Justices.

Power of two justices by 13 H. 4.

By the 13 *H. 4. c.* 7. *f.* 1, If any riot, assembly, or rout of people, against the law, be made; the justice of the peace, three or two of them at the least, and the sheriff, or under-sheriff, shall come with the power of the county, if need be, and shall arrest them.

Penalty on not doing their duty.

And the justices of the peace dwelling nighest in the county, where such riot, assembly, or rout shall be, together with the sheriff or under-sheriff, and also the justices of assize for the time they shall be in their sessions, shall do execution of the same statute, every one upon pain of 100*l.* to the king. *Id.* *f.* 4.

By 2 H. 5.

And by the 2 *H. 5. c.* 8. *f.* 2, The king's liege people in the county, being sufficient to travel, shall be assistant to the justices, commissioners, sheriff, or under-sheriff, when they shall be reasonably warned to ride with them to resist such riots, routs, and assemblies; on pain of imprisonment, and to make fine and ransom to the king.

Justices may raise the county to assist them, on proper information of a riot at a distance, as well as within their own view.

The justices, it seems, are not only impowered by the 13 *H. 4. c.* 7, to raise the power of the county to assist them, in suppressing a riot which may happen within their own view or hearing, but they may also safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were really any such riot or

not

not; for it may be dangerous for them to wait for certain information of the fact: but it should seem that they are punishable for alarming the country in this manner, without such probable ground for their proceeding, as would induce a reasonable man to think it necessary and proper. 1 Haw. 161.

And the statute of 13 H. 4. c. 7. f. 1, extends to all other unlawful assemblies as well as riots. 1 Haw. 161.

The king's liege people.] Except women, clergymen, persons decrepit, and infants under the age of fifteen. 1 Haw. 161.

To resist such riots.] To arrest the rioters and conduct them to prison. 1 Haw.

And shall arrest them. See the 13 H. 4. c. 7. f. 1.] And if they should escape, they may take them upon a fresh pursuit; but they cannot, at another time, award any process against them on the record, but ought to send the record into the King's-Bench, that process may issue thereon from thence; yet it seems clear that they may arrest them for their trespass on the statute of 34 Ed. 3, in order to compel them to find sureties for their good behaviour. 1 Haw. 162.

And the 13 H. 4. c. 7. f. 1, enacts, That the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their presence against the law: and by the record the offenders shall be convicted in the same manner and form as is contained in the statute of forcible entries. And if such offenders be departed before the coming of the said justices and sheriffs, or under-sheriff, the same justices, three or two of them, shall diligently enquire within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land.

Have power to record] And they may do this whether the offenders be then in custody or have escaped. 1 Haw. 161. Recording
riot.

Shall be convicted.] It seems certain, that the record of a riot, expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it cannot be traversed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. 1 Haw. 162.

But it seems clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or main, or rescous, he shall be concluded thereby as to the riot Record only re-
specting riots.

riot only; because the justices, by this statute, have a judicial authority over no other offences than riots, routs, and unlawful assemblies. *Id.*

The record ought to remain with one of the justices, and not among the records of the sessions, it being made out of sessions, and not appointed to be certified thither. *Dalt. c. 82.*

Such record
should precisely
contain the cir-
cumstances.

Such a final record being a conviction of the parties, as to all such matters as are properly contained in it, it should be certain as to the time and place of the offence, the number of persons concerned therein, and the several kinds of weapons used by them, and all other circumstances of the fact; for since the parties are excluded from denying the truth of such a record, and have no other remedy to defend themselves against it, but by taking advantage of the insufficiency of its contents, they may justly demand the benefit of excepting to it, if it shall not expressly shew that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statute: and hence it seems also to follow, that such a record may be excepted against, if it shall not appear to have been made by the sheriff or under-sheriff in concurrence with the justices. *1 Haw. 162.*

As is contained in the statute of forcible entries.] The statute which is called the statute of forcible entries, is that of the 15 R. 2. c. 2. And hereupon it is said, that the offenders being under the arrest of the justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king; which can be assessed by no other justices of the peace, except those by whom the record of the offence was made. *Id.*

By the same
justices, in this
case, are under-
stood any jus-
tices in the
county.

The same justices.] It is generally agreed, that any justices of the county may take such an enquiry, whether they dwell near where the riot happened or not; for the statute ought to be construed as largely as the words will bear in favour of the justices power in suppressing such riots; therefore those words in the statute *that the same justices shall enquire*, ought to be thus expounded, that the same justices who were before empowered to raise the posse, shall enquire, and that is, any justices in the county. *1 Haw. 163.*

Shall diligently enquire.] That is by a jury: in order to which, the statute of 19 H. 7. c. 13, enacts, that the sheriff, on their precept directed to him, shall, on pain of 20*l.* return twenty-four persons, whereof every of them shall have lands and tenements within the shire, to the yearly value of

20s. of charter land of freehold, or 26s. 8d. of copyhold, or of both, over and above all charges: and he shall return upon every juror in issues, at the first 20s. and at the second 40s.

Within a month.] Though this statute is mandatory, that the inquisition shall be taken *within a month*, under a penalty in the neighbouring justices; yet, after the month, it is still discretionary in the justices to take an inquisition, &c. and that by construction of the last clause of this statute, which says that they shall do execution of this act on pain of 100l. the lapse of a month does not determine their authority; it only subjects them to a penalty. *Carth. 384. 2 Salk. 593.*

Shall hear and determine according to the law of the land.] Consequently they may award process under their own teste, against those indicted before them of any of the offences abovementioned, according to the form of this statute; and award the like process for the trial of a traverse of such an inquisition; and do all other things in relation thereunto, which are of course incident to all courts of record. *1 Haw. 163.*

The riot being so found by inquisition, the justices must make a record thereof in writing of such their enquiry or presentment found before them; which record also is to remain with one of the justices. *Dalt. c. 82.*

And by the 13 H. 4. c. 7. §. 2, If the truth cannot be found in the manner as is aforesaid, then, within a month then next following, the justices, three, or two of them, and the sheriff or under-sheriff, shall certify before the king and his council, all the deed and circumstances thereof, which certificate shall be of the like force as the presentment of twelve men; upon which certificate the offenders shall be put to answer, and they which be found guilty shall be punished after the discretion of the king and his council.

And if such offenders traverse the matter so certified, the certificate and traverse shall be sent into the King's-Bench to be tried and determined. *Id. §. 3.*

And if the riot, rout, or unlawful assembly be not found, by reason of any maintenance or embracery of the jurors, then the same justices and sheriff or under-sheriff shall, in the same certificate, certify the names of the maintainers and embracers, with their misdemeanors. *19 H. 7. c. 13.*

Shall certify.] And such certificate being in the nature of an indictment at the common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riot and maintenance. *1 Haw. 165.*

Before the king and his council.] It seems clear that the certificate ought to be made to the privy-council board, and not to the Chancery or King's-Bench, which in some statutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* 165.

And the said justices and other officers shall execute their offices aforesaid at the king's costs, in going and continuing in doing their said offices, by payment thereof to be made by the sheriff, by indentures betwixt the said sheriff and justices, and other officers aforesaid, whereof the sheriff upon his account in the Exchequer shall have due allowance. 2 *H.* 5. c. 8.

In order to the defraying of which, the said statute directs the fines of the offenders to be enlarged, and thereout the sheriff may pay the charges of the said justices; and of the jury, that is, for their diet: and the sheriff's fees, and the like. *Dalt.* c. 82.

Though by the 13 *H.* 4. c. 7. s. 4, The justices dwelling nighest only are liable to the penalty of 100*l.* yet if any others on notice shall neglect to supply their default, they are fineable at discretion. 1 *Haw.* 166.

But if any justices, not dwelling nearest to the place, shall actually execute the statute, they excuse all the rest. 1 *Haw.* 165.

V. How by Process out of Chancery.

The 2 *H.* 5. c. 8, enacts, That if default be found in the two justices, sheriff, or under-sheriff, then, at the instance of the party grieved, a commission shall be issued under the great-seal, to enquire as well of the truth of the case for the complaint, as of such default.

And rioters shall be taken by writ and proclamation out of Chancery, on suggestion of two justices and the sheriff, of the common fame of such riot. 2 *H.* 5. c. 9. 8 *H.* 6. c. 14.

Rivers and Navigation. See, BANKS, RIVERS, and NAVIGATION.

Robbery.

- I. Definition of Robbery.
- II. Assaulting with Intent to rob.
- III. Principal and Accessary in Robbery.
- IV. Levying Hue and Cry on a Robbery committed.
- V. In what Cases the Hundred is liable to answer Damages.
- VI. Manner of proceeding against the Hundred.
- VII. Damages how levied and applied.
- VIII. Of apprehending a Robber.
- IX. Punishment of Robbery.
- X. Of the Restitution of Goods of which a Person is robbed.
- XI. Pardon for discovering an Accomplice.

I. Definition of Robbery.

ROBBERY is of two kinds, from the *person*, and from the *house*. Robbery from the *house* we have treated on in the titles **BURGLARY** and **LARCENY**: robbery from the *person* shall be the subject of this title.

Robbery, says lord Coke, is a felony by the common-law, committed by a violent assault upon the *person* of another, by putting him in *fear*, and taking from his *person* his money or other goods of any value whatsoever. 3 *Inst.* 68. Robbery what;

To make a robbery there must be a felonious intention; and so it ought to be laid in the indictment. 1 *H. H.* 532. Must be with a felonious intent.

From his person.] Taking a thing in a man's presence is in law a taking from the person. *Hale's Pl.* 73. *Str.* 1015.

Thus if a person shall take or drive my cattle out of my pasture, in my presence; this is a robbery, if he make an assault upon me, or put me in fear. *Hale's Pl.* 73.

To obtain money from a person against his will, by threatening to accuse him of unnatural practices, amounts to the crime of robbery, as in the following case:

At the Old Bailey in February session 1779, James alias Patrick Donnally was tried before Mr. justice Buller, and found guilty of having committed two several highway robberies upon the person of the honourable Charles Fielding, To obtain money by threats and putting in fear, is robbery.

Esq. son of the earl of *Denbigh*. But the judgment was respited, and the following case submitted to the opinion of the judges. On the 18th of *January* 1779, the prosecutor, Mr. *Charles Fielding*, dined at Mr. *Cotten's* in *Harley-street*, *Cavendish-square*. As he was returning through *Soho-square* towards the playhouse, between the hours of six and seven o'clock in the evening, he met the prisoner, whom he had never seen before. The prisoner desired that Mr. *Fielding* would give him a present. Mr. *Fielding* asked "for what?" The prisoner answered, "You had better comply, or I will take you before a magistrate, and accuse you of an attempt to commit an unnatural crime." Mr. *Fielding* then gave him half a guinea, which the prisoner said was not sufficient; but Mr. *Fielding* had no more in his pocket. On the 20th of *January*, about four o'clock in the evening, Mr. *Fielding* met the prisoner again in *Oxford-street*, who made use of the same threats as before; said Mr. *Fielding* knew what passed in *Soho-square*; and, unless he would give him more money, he would take him before a magistrate and accuse him of the same attempt, and that it would go hard against him unless he could prove an *alibi*. Mr. *Fielding* then went to the shop of Mr. *Walter*, a grocer in *Old-Bond-street*: the prisoner followed him, and staid on the outside of the door. When Mr. *Fielding* went into the shop, he took a guinea out of his pocket, gave it to Mr. *Walter*, and desired he would give it to the man at the door; which Mr. *Fielding* saw him do, and then the prisoner went away. Mr. *Fielding* said he was exceedingly alarmed at both the times, and under that alarm gave the money. He was not aware what were the consequences of such a charge, and he apprehended it might cost him his life. The jury were desired to consider, 1st. Whether they were satisfied that Mr. *Fielding* delivered his money through fear, and under an apprehension that his life was in danger? 2dly. If they did not think Mr. *Fielding* apprehended his life in danger, whether the money was not obtained by means of the prisoner's threats, and against the will of Mr. *Fielding*? The jury found him guilty; and said they were satisfied that Mr. *Fielding* delivered his money through fear, and under an apprehension that his life was in danger. The question is, Whether this amounts in law to a robbery? Signed *F. Buller*, 19th *Feb.* 1779. On the 29th of *April* following, the twelve judges assembled at lord chief-justice *De Grey's* house, in *Lincoln's-inn-fields*, for the purpose of hearing counsel upon this case. It was argued by Mr. *Howarth* for the crown, and by Mr. *Graham* for the prisoner. The

counsel

counsel for the crown spoke first, and afterwards replied to the arguments by the counsel for the prisoner. The counsel then withdrew, and the judges debated the point among themselves, and then gave their several opinions, beginning with the junior judge. At the ensuing *May* sessions at the Old Bailey, Mr. justice *Willes* delivered the result of their deliberations to the following effect. The question submitted to the judges was, Whether the offence amounts to a robbery? This question has been argued by counsel, both for the prisoner and for the crown. The twelve judges have investigated the subject, and delivered their sentiments *seriatim*; and they are unanimously of opinion, That the prisoner at the bar is guilty of the crime of which he has been convicted. The grounds and principles upon which this determination has been formed, I shall endeavour to state to the court with equal brevity and perspicuity. The definition of robbery, as it is given by Sir *William Staundford*, Sir *Mathew Hale*, and Mr. serjeant *Hawkins*, is "a felonious and violent taking of any money or goods from the person of another, putting him in fear:" from which it is evident, that to constitute the crime of robbery, three ingredients are necessary; 1st. a felonious intention, or *animus furandi*: 2dly. Some degree of violence or putting in fear: 3dly. A taking from the person of another. 1st. The felonious intention, or *animus furandi*: The prisoner, a stranger to Mr. *Fielding*, stops him in the street during the dusk of the evening, and desires that he would give him a present; and when he is asked, "For what?" he replies, "You had better comply, or I will take you before a magistrate, and accuse you of an attempt to commit an unnatural crime." This conduct will not bear two constructions. It is clear that he laid in the way for the purpose of obtaining money, against the will of Mr. *Fielding*; and wherever one man obtains property from the possession of another *against his will*, the law presumes the act to proceed from a felonious intention, unless the circumstances under which it is done evince the contrary; for the security of private property is the care of the law, and the presumptions which it raises to attain that end, cannot be repelled by even a specious pretence of right; much less in the present case, where the baseness of the design is apparent. Nor will the law suffer its object to be evaded by an ambiguity of expression; for if a man *animo furandi* says, "Give me your money—Lend me your money—Make me a present of your money," or words of the like import, they are equivalent to the most positive order or demand; and if any thing be obtained in

consequence, it will form the first ingredient in the crime of robbery. The second point considered was, Whether the prisoner had used that degree of violence, or inspired that degree of fear, which the law holds necessary to constitute this offence. In the definition above-mentioned, these two words are included as descriptive of the cause and the effect; but the law does not in this case require an actual violence upon the person, or an existing fear in the mind. A man with a cutlass under his arm, or a pistol in his hand, demands and obtains the money of another without touching his person: here no actual violence is used. "Suppose (says Mr. justice *Forster*, p. 128.) the true man is knocked down, without any previous warning to awaken his fears, and lieth totally insensible while the thief rifles his pockets; where is the circumstance of existing fear?" And yet in both these cases the crime would be robbery. The putting in fear need not be laid in the indictment for this offence, nor the fact of fear proved upon the trial; but if it be laid to be done violently and against the will, the law *in odium spoliatoris* will presume it. It is not even necessary that there should be actual danger; for a robbery may be committed without using an offensive weapon, as by using a tinder box, or a candlestick instead of a pistol. A reasonable fear of danger, caused by the exercise of a *constructive violence*, is sufficient; and where such a terror is impressed upon the mind as does not leave the party a free agent, and, in order to get rid of that terror, he delivers his money, he may clearly be said to part with it against his will. Nor need the degree of constructive violence be such, as, in its effects, necessarily imports a probable injury; for when a villain comes and demands money, no one knows how far he will go. But let us see how far the circumstances which attended the fact in the present case, will bring it within these rules: a young gentleman from school is accosted at night in *London* streets, by a person whom he never saw before, whom he must suspect to be a villain: the stranger demands a present. This conduct seems to satisfy the legal idea of robbery. But the prisoner goes further, and says, "You had better comply, or I will take you before a magistrate." This is a threat of *personal violence*; for the prosecutor had every thing to fear, in being dragged through the streets as a culprit charged with an unnatural crime. The threat must necessarily and unavoidably impart intimidation. It is equivalent to actual violence; for no violence that can be offered could excite a greater terror in the mind, or make a man sooner part with his money. What can operate more power-

powerfully on the mind than a menace to do that, which in its consequences would blast the fairest fame, and ruin forever the brightest character? As to the third ingredient, viz. A taking from the person; the judges were of opinion, That ingenuity could not raise a doubt upon the point. *Leach's Cas. in Cr. Law, 199.*

If a man forces another to part with his property, for the sake of preserving his character from the imputation of having been guilty of an unnatural crime, it will amount to a robbery, even though the party was under no apprehension of personal danger, as will appear in the following case:

Daniel Hickman was tried before Mr. justice *Buller* at the Old Bailey, in July sessions 1783, for a robbery upon *John Miller*. The prosecutor was servant to Mr. *Lewis*, table-decker to the chaplain's room in *St. James's* palace, and had an apartment in which he alone slept, in a court called the Board of Green Cloth. The prisoner was a centinel on guard at the palace, and had been one night treated by the prosecutor with some bread and cheese and ale in this room. About a fortnight afterwards, very late in the evening of the day laid in the indictment, the prosecutor on going up stairs, heard somebody stepping almost upon his heels. On turning round he discovered it was the prisoner, who said, "It is me." The prosecutor replied, "What brought you here at this time of the night?" The prisoner answered, "I am come for satisfaction; you know what passed the other night; you are a Sodomite; and if you do not give me satisfaction, I will go and fetch a serjeant and a file of men, and take you before a justice; for I have been in the Black-hole ever since I was here last, and I do not value my life." The prosecutor asked him what money he must have? The prisoner said, "I must have three or four guineas." The prosecutor accordingly gave him two guineas, which was all he had, and promised to give him another guinea the next morning. The prisoner took the two guineas, saying, "Mind I don't demand any thing of you." The next morning he came again, and received the other guinea; and, in a few days after, upon making application for more money upon the same pretence, he was apprehended. The prosecutor swore that he was very much alarmed when he gave him the two guineas, and did not very well know what he did; but that he parted with his money under an idea of preserving his character from reproach, and not from the fear of personal violence. The judge stated to the jury the several ingredients which the law required to constitute the crime of robbery; and

To obtain money against the will, by similar threats, though no danger be apprehended by the party, is a robbery.

particularly, as applicable to this species of it, the determination of the judges in the case of *K. v. Donnally*; remarking the difference, that in *Donnally's* case the prosecutor had sworn, that he delivered his money under an apprehension of *personal danger*, as well as from the fear of losing his character; but that, in the present case, the prosecutor had sworn that he parted with his money for the sake of his character only, and not from any apprehension of danger to his person. The jury thought the prosecutor parted with his money against his will, through a fear that his character might receive an injury from the prisoner's accusation, and they therefore found the prisoner guilty. But as this was only the second case of the kind, and as some doubt had prevailed with respect to *Donnally's* case, because he was not executed, the judgment was respited, and the case submitted to the consideration of the twelve judges, upon the difference before mentioned between the two cases. In February session 1784, the prisoner was called to the bar, and Mr. justice *Ashurst* delivered the opinion of the judges to the following effect: Some doubts having been entertained, as to the opinion of the twelve judges, in the case of *Patrick Donnally*, the judge who tried the prisoner thought it proper that the present case should likewise be referred to their consideration. They have accordingly conferred upon it; and they are of opinion, That this case does not *materially* differ from that of *Donnally*; for that the true definition of robbery is the stealing, or the stealing or taking from the person, or in the presence of another, property of any amount, with such a degree of force or terror, as to induce the party *unwillingly* to part with his property; and whether the terror arises from real or expected violence to the *person*, or from a *sense of injury to the character*, the law makes no kind of difference; for to most men the idea of losing their fame and reputation is equally, if not more terrific, than the dread of personal injury. The principal ingredient in robbery is a man's being *forced* to part with his property; and the judges are unanimously of opinion, that upon the principles of law, and the authority of former decisions, a threat to accuse a man of having committed the greatest of all crimes, is, as in the present case, a sufficient *force* to constitute the crime of robbery by putting in fear. The prisoner received sentence of death, and was executed. *Leach's Cas. in Cr. Law, 257.*

It is not necessary for the robber to keep possession of the booty in order to complete the crime.

The continuance of the property in the possession of a robber, is not required by the law to complete the crime.

Old Bailey December session 1781, — *Peat* was indicted before Mr. baron *Hotham*, present Mr. justice *Willes*, for a highway robbery on *Richard Downe*, esq. by putting him

in corporal fear and danger of his life, and taking from his person a silk purse, value three pence, and twenty-three shillings in monies numbered. The prisoner on horse-back stopped Mr. Downe's carriage on Finchley-common, and demanded his money. Mr. Downe gave him his purse: the prisoner took it, but immediately returned it to Mr. Downe, saying, "If you value your purse you will please to take it back, and give me the contents of it." Mr. Downe received it back; but while he was taking out the money, his servant jumped from behind the carriage, and secured the prisoner. A doubt arose, whether, as robbing is only an aggravated species of larceny, there was a sufficient taking in this case to constitute the offence? But the court held, that, though the prosecutor did not eventually lose either his purse or his money, yet, as the prisoner had in fact demanded his money, and under the impulse of that threat and demand, the property had been once taken from the prosecutor by the prisoner, it was in strictness of law a sufficient taking to complete the offence, though the prisoner's possession had continued for an instant only. *Leach's Cas. in Cr. Law. 224.*

A. requires *B.* to deliver his purse, and he delivers it accordingly; but *A.* finding only two shillings in it, gives him it again; yet this is a taking by robbery. *Crom. 34. Dalt. c. 153. 1 Hale, 533.* For he who has once actually completed the offence, by taking the goods of another in such a manner into his possession, cannot afterwards purge it by any redelivery. *Sum. 70. 3 Inst. 60. 1 Haw. 147.* The outrage offered to the rights of society does not vary in its nature, because it is ineffectual in its consequences. *Eden's P. P. L. 286.* And the continuance of the property in the possession of the robber is not required by law. *3 Inst. 69. See also Staundf. 27.*

Returning the booty will not cancel the robbery

II. Assaulting with Intent to rob.

By the 7. G. 2. c. 21, If any person shall, with any offensive weapon, assault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a felonious intent to rob him, he shall be guilty of felony, and be transported for seven years.

Assaulting with intent to rob.

And by the 24. H. 8. c. 5, If any person be indicted or appealed for killing any person attempting to rob, he shall be acquitted.

Killing a person attempting to rob.

III. Prin-

III. Principal and Accessary in Robbery.

All principals

All who come in company to rob are principals, though one actually do it. *Hale's Pl. 72.*

Receiving stolen
jewels or plate.

The 10 G. 3. c. 48, enacts, That every person who shall buy and receive any stolen jewel, or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in cases where such jewel or jewels, or gold or silver plate shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon, whether he be in or out of custody, as after his conviction: and if such person so buying or receiving shall be convicted thereof, he shall be guilty of felony, and transported for fourteen years.

IV. Levying Hue and Cry on a Robbery committed.

By the 13 Ed. 1. *fl. 2. c. 1.* (called the statute of *Winton*) it is enacted, That every county shall be so well kept, that immediately upon robberies committed, fresh suit shall be made from town to town, and from county to county. See also Title HUE and CRY.

V. In what Case the Hundred is liable to answer Damages.

Hundred to
answer.

The hundred where the offence is committed, shall be answerable for the robberies, and for the damages, if the offender be not taken. 13 Ed. 1. *fl. 2. c. 2.* 28 Ed. 3. c. 11.

Hundred neg-
lecting hue and
cry.

But by the 27 Eliz. c. 13, Such hundred may recover half the damages from any other hundred, where fresh suit after hue and cry shall not be made. *f. 2.*

Where the rob-
ber is appre-
hended.

But by 8 G. 2. c. 16, The hundred shall not be chargeable, if one robber be apprehended in forty days from the publication in the Gazette; as hereafter mentioned. *f. 3.*

Robbing on the
Lord's day.

But now by the 29 C. 2. c. 7. *f. 5.* If any person who shall travel on the Lord's day, shall be then robbed, no hundred or the inhabitants thereof, shall be charged with, or answerable for, any robbery so committed; but the person so robbed, shall be barred from bringing any action for the said robbery, any law to the contrary notwithstanding. Nevertheless the inhabitants of the counties and hundreds (after notice of any such robbery to them, or some of them given, or after hue and cry for the same brought,) shall make, or cause to be made fresh suit and pursuit after the offenders, with horsemen, and footmen, as by the 27 Eliz. is provided

vided; on pain of forfeiting to the king as much money as might have been recovered against the hundred by the party robbed, if this law had not been made.

Who shall travel] *M. 7 G. Tashmaker v. the hundred of Edmonton.* The plaintiff lived a mile or two from the church, and going thither with his lady in his coach upon a Sunday, was robbed: he brought his action against the hundred, and recovered; for the statute extends only to the case of travelling: but *Pratt Ch. J.* said, if they had been going to make visits, it might have been otherwise. *Sir. 406. Comyns, 345.*

A new highway changed for an ancient one, without legal authority, is said not to be a highway in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. *1 Haw. 202.*

If any man be robbed in his house, the hundred shall not be charged with it, whether it be done by day or night; because every man's house is his castle, which he ought to defend; and if any one is robbed in his house, it shall be esteemed his own fault. *Dalt. c. 84.* If it be in an house, the hundred is not answerable.

But if a person be assaulted on the highway, and carried into an house, and there robbed, it seems the hundred shall be liable; for otherwise the provision made by the statute would be eluded. *1 Salk. 614.*

Neither shall a robbery in the night charge the hundred; but if in the day-time, or there be so much day light that a person may see a man's countenance, so that the robber may be known, though before the sun-rising, or after the sun-setting, the hundred shall answer for it. *Dalt. c. 84.* Nor if in the night.

No person shall recover against the hundred, more than 200*l.* unless the persons robbed, shall at the time of the robbery be together in company, and be in number two at the least, to attest the truth of his or their being so robbed. *22 G. 2. c. 24.* In what case there must be two in company.

And by the yearly land-tax acts, no receiver-general, or any of his agents employed for carrying money on account of the said tax, shall maintain an action against the hundred for being robbed, unless the persons carrying such money are together in company, and are in number three at the least. In what case there must be three in company.

VI. Manner of proceeding against the Hundred.

In order to make the hundred liable, these things following must be done:

By the *27th Eliz. c. 13. s. 11,* The person robbed shall, with as much convenient speed as may be, give notice thereof, unto some of the inhabitants near the place. Notice to the inhabitants.

And

And though the place, where notice is given, be in another hundred or county, it is good enough; for a stranger may not know the confines of the hundred or county; and that hundred where notice is given must make hue and cry, and by that means the hundred where the robbery was committed will soon know of it. *Cro. Car.* 41, 379. 3 *Salk.* 184.

Notice to a
constable.

He shall also give notice, with as much convenient speed as may be, to a constable of the hundred, that is, the high constable, or to a constable of some place near; or leave notice in writing at his dwelling-house, describing in such notice, the felon, and the time and place of the robbery. 8 *G. 2. c.* 16. *f.* 1.

And every constable to whom such notice shall be given, and every high and petty constable within the hundred, as soon as it shall come to his knowledge, by the party robbed, or by any to whom such notice has been given, shall with the utmost expedition make or cause to be made fresh suit and hue and cry after the felons, on pain of 5*l.* with full costs; half to the king, and half to him who shall sue in six months. 8 *G. 2. c.* 16. *f.* 11, 12. This penalty is small; but, as the not pursuing hue and cry is also an offence at the common law, the offender may be indicted at the common law, and thereupon fined and imprisoned.

In the case of *Ball* against the hundred of *Wymerley, M.* 16 *G. 2.* Upon a case made at the assizes, it was stated that soon after six in the morning, the plaintiff was robbed at the distance of two miles and a half from *Northampton*, and the highwayman cut his bridle and stirrups, threw him into a ditch, and turned his horse loose; that the plaintiff recovered them, remounted, rode through a village called *Cotton*, where he gave no notice, met three men on the road, whom he informed of the robbery, and arrived at *Northampton* by seven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe*, three miles off, where the high constable lived, and between eight and nine gave notice. And the question was, Whether this notice was sufficient to maintain the action? The court on argument held it to be good notice, for the high constable is the properest person to go to, and it is not required that he go to the next constable. It appears that the plaintiff lost no time, considering the circumstances he was in; and *Rotherthorpe* is not at such a distance, but that it may come within the meaning of the word *near*. The plaintiff therefore had judgment. *Str.* 1170.

Notice in the
Gazette.

By the 8 *G. 2. c.* 16. *f.* 1, The party robbed shall also, within the space of twenty days next after the robbery

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committed, cause notice to be given in the Gazette, describing therein the felon, and the time and place of such robbery, and the goods and effects whereof he was robbed.

[Describing therein the felon] In the case of *Whitworth* and the hundred of *Grimshoe*, H. 33 G. 2. The plaintiff *Whitworth*, on the trial at the assizes, gave evidence, that one of the robbers was tall and lusty, had on a brown woollen cap or bonnet, and a blue jacket, was of a fresh complexion, had particular large red eye-brows, and full ruddy cheeks, by either of which the plaintiff thought he could have known the robber from any other person. The notice in the Gazette was only that the robber was a "tall lusty man, of a fresh complexion, had on a brown woollen cap or bonnet, and a blue jacket." It was objected, that this description in the Gazette was insufficient, a very material circumstance, as to the eyebrows and countenance, being omitted. And the court was of that opinion; therefore the defendant had judgment. 2 *Wilson*, 109.

The party robbed shall also be examined on oath within twenty days next before the action brought, before a justice in or near the hundred, whether he knows any of the robbers; and if he confesses that he does, he shall before the action brought, be bound over by the said justice effectually to prosecute the person or persons so known to have committed the said robbery. 27 *Eliz. c. 13. s. 11.* To be examined on oath.

[He shall also be examined] That is, the party robbed who is to bring the action, shall be examined. Here is however a diversity. T. 2 *Car. Raymond* and the hundred of *Oking*. The servant was robbed of his master's goods, and the servant made oath before a justice, and the master brought the action against the hundred. By the court: The action well lies for the master; and the servant's oath is sufficient, for it was properly in his notice, that he was robbed, and did not know any of the robbers, and the master knows it not that he was robbed, or who were the persons, but by report of his servant; and it would be inconvenient, if the master should not bring the action instead of the servant; for the servant might release, or compound, or discontinue the suit, and so the master should have the loss by his falsehood: therefore the master shall bring the action, and have his servant whom as robbed, to be his witness. *Cro. Car. 37.*

If the servant be robbed in the presence of the master, the master shall sue; and the oath of the master is sufficient. By the court. 2 *Salk. 613.*

[Within twenty days next before.] And the time of making such oath must be laid in the declaration, for that is traversable. 3 *Salk. 184.*

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If the justice shall refuse upon his request to examine him, an action will lie against the justice; because he does not act therein as a judge of record, but as a minister appointed for the examination by the statute. *Cro. Car.* 211.

Bond with two sureties to pay costs.

And by the 8 G. 2. c. 16, Before the action be commenced, he shall go before the chief clerk, or secondary, or the filazer of the county, or the clerk of the pleas of that court wherein such action is intended to be brought, or their deputies, or before the sheriff of the county, and enter into 100*l.* bond, to the high constable, with two sufficient sureties, to pay him costs, if he shall be cast. *f.* 1, 2.

Bond to be certified.

Also, by the same statute, if bond is taken before the sheriff, he shall immediately certify the same in writing, to the respective officer abovementioned; which certificate the person robbed shall deliver to such officer before the action is brought; and he shall pay no more than 2*s.* 6*d.* to the sheriff for making such certificate, nor more than that sum to the officer for receiving and filing the same. And the bond shall be delivered to the high constable *gratis.* *f.* 2.

Time of bringing the action.

All this being done, and 40 days being expired from the day of the publication in the Gazette (for if one of the offenders is apprehended within that time, the action will not lie, 8 G. 2. c. 16. *f.* 3); and also a whole year not being expired from the time of the robbery committed (for if a year is expired, then the action will not lie, by the 27 *Eliz.* c. 13. *f.* 9.) But all these things being regularly and duly performed, the action may be brought.

Costs to be served on the high constable.

And by the 8 G. 2. c. 16. *f.* 4, The process shall be served on the high constable only; who shall cause public notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town within the hundred, then in some parish church in the hundred, on the the next *Sunday* immediately after divine service. He shall also enter appearance, and defend the action, as he shall be advised.

Inhabitants may be witnesses.

And on the trial any inhabitant may be a witness for the hundred. *Id.* *f.* 15.

VII. Damages how levied and applied.

Writ of execution to be shewn to two justices

If the plaintiff recover, the sheriff shall shew the writ of execution to two justices (one *Q.*) in or near the hundred. 27 *Eliz.* c. 13. *f.* 5. 8 G. 2. c. 16. *f.* 4.

And the high constable's charge.

The high constable shall also cause his attorney's bill to be taxed by the proper officer, and give in to the said justices an account thereof, and of his other expences in defending the

the action, and make due proof of the same on oath, to the satisfaction of the justices. 8 G. 2. c. 16. f. 4.

And, by the same statute, f. 4, 10, Two justices shall thereupon cause a taxation to be made, and levied in thirty days, upon every division within the hundred, by the constables, by distress and sale. Taxation.

And the constable shall in ten days pay the same to the sheriff, who shall pay the same without fee to the plaintiff for his costs and damages, and to the high constable for his expences. *Id.* f. 4, 5. Payment.

The high constable shall also, if he recovers against the plaintiff, be reimbursed his expences which shall exceed the costs to be taxed, and also such costs taxed as he shall not be able to recover, on account of the insolvency of the plaintiff and his sureties; which shall be paid in ten days to the said two justices, or one of them, who shall, on request, deliver the same to the high constable. *Id.* f. 7, 8. High constable shall be reimbursed if the plaintiff is cast.

And by the same statute, f. 6, The sheriff shall not be obliged to return the writ of execution, till after sixty days from the time it shall be delivered to him, that time may be allowed for taxation, assessment, and collecting the money. Return of the writ.

By the 22 G. 2. c. 46. f. 34, Execution is not to be levied on any particular inhabitant, but taxation is to be made.

VIII. Of apprehending a Robber.

By the 8 G. 2. c. 16. f. 9, Any person apprehending a felon, whereby the hundred becomes indemnified, shall have 10l. reward paid by the hundred; the same to be ascertained, levied, and paid by two justices (one *Q.*) in or near the hundred, in such proportions as they shall think reasonable, within the hundred. 10l. by the hundred.

And moreover by the 4 W. c. 8. f. 2, Every person who shall apprehend a highwayman, and prosecute him till he shall be convicted of any robbery committed in or upon any highway, passage, field, or open place, shall receive from the sheriff of the county where the robbery and conviction was made, without paying any fee, 40l. within one month after such conviction and demand thereof made, by tendering a certificate to the sheriff, under the hand of the judge, certifying the conviction of such a felon for a robbery within the county of the said sheriff, and also that such felon was taken by the person claiming the reward. And 40l. by the king, b. 4 W.

For which certificate shall be paid 5s. 6 G. c. 23. f. 8.

And should any disputes arise between the persons apprehending, touching their right to the reward, the judge shall regulate the distribution. The judge to regulate the distribution.
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by such certificate direct to be paid to and amongst the parties claiming, in such proportions as to him shall seem just and reasonable. 4 *W. c. 8. f. 2.*

And by the 6 *G. c. 23. f. 8*, The streets of *London* and *Westminster*, and of other cities, towns, and places, shall be deemed highways as to this matter.

And the goods taken with the highwayman.

And as a further reward, the person so apprehending a highwayman shall have moreover the horse, furniture, arms, money, or other goods of the robber, that shall be taken with him, notwithstanding the right of the king, or lord of the manor, or of the person lending or letting the same to hire: but saving the right of them from whom they may have been feloniously taken. 4 *W. c. 8. f. 6.*

Executors, &c. of persons killed.

And by the same statute, *f. 3*, if a person is killed in endeavouring to apprehend such highwayman, the sheriff shall pay 40*l.* without fee, under the like penalty, to the executors or administrators of the person killed, immediately, upon certificate delivered to him under the hand and seal of the judge of assize for the county where the fact was done, or the two next justices, of such person being so killed: Which certificate the said judge or justices, upon proof before them made, shall give immediately without fee.

Sheriff to be allowed the reward.

And the sheriff shall be allowed such rewards in his accounts. 4 *W. c. 8. f. 4.*

Punishment of Robbery.

Generally excluded clergy.

Robbery is generally excluded from the benefit of clergy. 3 *Inst. 68.* 2 *Haw. 531, 537.* 2 *H. H. c. 48.*

Robbery in the navy.

And the 22 *G. c. 33*, enacts, that robbery in the navy shall be punished with *death*, or *otherwise*, as a court martial, on consideration of the circumstances, shall think meet.

X. Of the Restitution of Goods of which a Person is robbed.

Concerning the restitution of goods of which a person is robbed, see title RESTITUTION.

XI. Pardon for discovering an Accomplice.

By the 4 *W. c. 8. f. 7*, If any person being out of prison, shall commit any robbery, and afterwards discover two or more persons who shall commit any robbery, so as two or more be convicted; he shall have the king's pardon for all robberies he shall have committed before such discovery.

Rum. See SPIRITUOUS LIQUORS.

END OF VOL. III.

Rev. G. A. A.



SIR JAMES EYRE, KNIGHT,
Lord Chief Baron of the Court of Exchequer.

